

---

# BULLETIN

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

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

---

Volume 90, No. 12

March 17, 2005

---

### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

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

**JOEL A. MIELE, SR.**

**JAMES CHIN**

*Commissioners*

**Pasquale Pacifico**, *Executive Director*

**Roy Starrin**, *Deputy Director*

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

---

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

**TELEPHONE - (212) 788-8500**  
**FAX - (212) 788-8769**

### CONTENTS

|                                   |     |
|-----------------------------------|-----|
| DOCKET .....                      | 150 |
| <b>CALENDAR</b> of March 29, 2005 |     |
| Morning .....                     | 151 |
| Afternoon .....                   | 152 |
| <b>CALENDAR</b> of April 5, 2005  |     |
| Morning .....                     | 153 |
| Afternoon .....                   | 154 |

---

# CONTENTS

---

**MINUTES of Regular Meetings,  
Tuesday, March 8, 2005**

Morning Calendar .....155

**Affecting Calendar Numbers:**

1126-48-BZ 249/51 West 43<sup>rd</sup> Street, Manhattan  
259-98-BZ 761-773 Kent Avenue, Brooklyn  
490-69-BZ 1408/18 Second Avenue, Manhattan  
100-71-BZ 61-03 Northern Boulevard, Queens  
183-97-BZ 250 East 60<sup>th</sup> Street, Manhattan  
158-02-BZ 444 Beach 6<sup>th</sup> Street, Queens  
273-04-A           128/32 East 78<sup>th</sup> Street and 121/23 East 77<sup>th</sup> Street, Manhattan  
271-04-A           One Pier 63, at 23<sup>rd</sup> Street, Manhattan

Afternoon Calendar .....161

**Affecting Calendar Numbers:**

102-03-BZ           291 Kent Avenue, Brooklyn  
348-03-BZ           66-18 74<sup>th</sup> Street, Queens  
293-04-BZ           610 Lanett Avenue, Queens  
295-04-BZ           3250 Richmond Avenue, Staten Island  
300-04-BZ           66 Huron Street, Brooklyn  
355-03-BZ           64-01/07 Grand Avenue, Queens  
385-03-BZ           85-15 & 85-17 120<sup>th</sup> Street, Queens  
9-04-BZ            114 Walworth Street, Brooklyn  
72-04-BZ            141-54 Northern Boulevard, Queens  
144-04-BZ           286 Hudson Street, Manhattan  
252-04-BZ           170 North 11<sup>th</sup> Street, Brooklyn  
258-04-BZ           1837 and 1839 East 24<sup>th</sup> Street, Brooklyn  
267-04-BZ           362/64 Coney Island Avenue, Brooklyn  
339-04-BZ           157-30 Willets Point Boulevard, Queens

**CORRECTIONS.....172**

**Affecting Calendar Numbers:**

342-03-BZ           92/94 Greene Street, Manhattan

---

# DOCKETS

---

New Case Filed Up to March 8, 2005

---

**32-05-BZ** B.BK. 288 7th Street, between Fourth and Fifth Avenues, Block 998, Lot 23, Borough of Brooklyn. Alt.#301823668. Proposed relocation and expansion of an existing not-for-profit school, located in an R6B zoning district, which does not comply with the zoning requirements for lot coverage, is contrary to Z.R. §24-11 and §52-31.

**COMMUNITY BOARD #6BK**

---

**33-05-BZ** B.BK. 1132, 1136 and 1140 East 36th Street, west side, between Avenues "K" and "L", Block 7635, Lots 77, 78 and 79, Borough of Brooklyn.

Applic.#301874461. Proposed construction of a five story and cellar community facility (school), located in an R5 zoning district, which does not comply with the zoning requirements for floor area, floor area ratio, open space, open space ratio, lot coverage, total height, side yard, rear yard, sky exposure plane and side setback requirement, is contrary to Z.R. §24-11, §23-141, §24-521, §24-34, §24-36 and §24-551.

**COMMUNITY BOARD 18BK**

---

**34-05-BZ** B.BK. 1975 East 24th Street, east side, between Avenues "S" and "T", Block 7303, Lot 56, Borough of Brooklyn. Alt.#301900272. Proposed enlargement of an existing one family dwelling, Use Group 1, located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yards, is contrary to Z.R. §23-141, §23-461(a) and §23-47.

**COMMUNITY BOARD #15BK**

---

**35-05-A** B.Q. 37 Beach 221st Street, east side, 240' south of Fourth Avenue, Block 16350, Lot 400, Borough of Queens. Alt.#401997951. Proposed alteration to an existing one family dwelling, not fronting on a legally mapped street, also a proposal to upgrade the existing septic system, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings Policy.

---

**36-05-A** B.Q. 35 Janet Lane, east side, 577.98' north of Beach 203rd Street and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.#402009660. Proposed alteration to an existing one family dwelling, located within the bed of a mapped Street, also a proposal to upgrade the existing septic system, is contrary to Section 35, Article 3 of the General City Law and Department of Buildings Policy.

---

**37-05-A** B.Q. 17 Fulton Walk, east side, 185' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.#402026981. Proposed alteration to an existing one family dwelling, not fronting on a legally mapped street, also a

proposal to upgrade the existing septic system, which is in the bed of the service road, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings Policy.

---

**38-05-BZ** B.Q. 80-01 Elliot Avenue, bounded by 80th Street, Eliot and Caldwell Avenues and 81st Street, Block 2921, Lot 40, Borough of Queens. Alt.#402069621. Proposed construction of a one story, Use Group 6 drugstore, located in a C1-2/R4 zoning district, which does not comply with the required number of parking spaces, and does not contain the required loading berth, is contrary to Z.R. §36-62 and §36-21.

**COMMUNITY BOARD #5Q**

---

**39-05-BZ** B.BK. 6 Lee Avenue, west side, between Clymer and Taylor Streets, Block 2173, Tentative Lot 35(Formerly 31 and 35), Borough of Brooklyn.

Applic.#301886911. Proposed enlargement of an existing yeshiva and associated synagogue, Use Group 3, located in an R6 zoning district, which does not comply with the zoning requirements for lot coverage, side yard, perimeter wall height, setback and sky exposure plane, is contrary to Z.R. §24-11, §24-35(b), and §24-522.

**COMMUNITY BOARD #1BK**

---

**40-05-BZ** B.M. 1095 Second Avenue, west side, 60.5' south of East 58th Street, Block 1331, Lot 25, Borough of Manhattan. Applic.#103997837. Proposed physical culture establishment, located on the second floor of a four story building, within a C2-8 (TA special district), requires a special permit from the Board as per Z.R. §73-36.

**COMMUNITY BOARD #6M**

---

**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

---

# CALENDAR

---

**MARCH 29, 2005, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 29, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

\_\_\_\_\_

## **SPECIAL ORDER CALENDAR**

### **200-24-BZ**

APPLICANT - Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.

SUBJECT - Application December 22, 2004 - reopening for an extension of time to obtain a Certificate of Occupancy, located in an R8 and C8-2 zoning district.

PREMISES AFFECTED - 3030 Jerome Avenue a/k/a 3103 Villa Avenue, 161.81' south of East 204th Street on the East Side of Jerome Avenue, Block 3321, Lot 25, Borough of The Bronx.

**COMMUNITY BOARD #7BX**

\_\_\_\_\_

### **189-96-BZ**

APPLICANT - John C Chen, for Ping Yee, owner; Edith D'Angelo-Cnandonga, lessee.

SUBJECT - Application September 8, 2004 - Extension of Term-Waiver- for an eating and drinking establishment with dancing, Located in an C2-3 overlay within an R6 zoning district.

PREMISES AFFECTED - 85-12 Roosevelt Avenue, (85-10 Roosevelt Avenue), south side of Roosevelt Avenue, 58' east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

**COMMUNITY BOARD #4Q**

\_\_\_\_\_

### **28-02-BZ**

APPLICANT - Sheldon Lobel. P.C., for Farbod Realty Corp., owner; Harris G. Joseph, Inc., lessee.

SUBJECT - Application - November 5, 2004 - Extension of Term & Amendment for the the use of a Pysical Cultural Establishment which was granted by BSA pursuant to Section 73-36 of the Zoning Resolution on February 4, 2003 for a term of two years. The application requests a change in the hours of operation contrary to the conditions set in the prior Resolution, located in a C5-2 zoning district.

PREMISES AFFECTED - 80 Madison Avenue, between 28th and 29th Streets, Block 858, Lot 14, Borough of Manhattan.

**COMMUNITY BOARD#5M**

\_\_\_\_\_

PREMISES AFFECTED - 151 West 76th Street, north side, 471' from the intersection of Columbus Avenue, Block 1148, Lot 112, Borough of Manhattan.

**COMMUNITY BOARD #7M**

\_\_\_\_\_

### **377-03-BZ**

APPLICANT - Fischbein Badillo Wagner Harding, LLP, for Shinbone Alley Associates, LLC, owner.

SUBJECT - Application February 18, 2005 - reopening for an amendment to the resolution granted on June 8, 2004 to rearrange approve floor area and units.

PREMISES AFFECTED - 25 Bond Street, south side of Bond Street, 70' east of Lafayette Street, Block 529, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #2M**

\_\_\_\_\_

## **APPEALS CALENDAR**

### **210-04-A**

APPLICANT - Joseph P. Morsellino, Esq., for Chilton Paint Co., owner; CPP Development, LLC, lessee.

SUBJECT - Application May 21, 2004 - Proposed six story residential building, with 134 dwelling units, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 109-09 15th Avenue, northwest corner of 110th Street, Block 4044, Lot 60, Borough of Queens.

**COMMUNITY BOARD #7Q**

\_\_\_\_\_

### **329-04-A**

APPLICANT - Jeffrey Geary, for Riley Realty Corp., owner.

SUBJECT - Application October 5, 2004 - Proposed construction of a two story single family residence, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law

PREMISES AFFECTED -10-03 Channel Road, (aka 100th Place), west side, 33.94' south of 197th Avenue, Block 15475, Lot 26, Borough of Queens.

**COMMUNITY BOARD #14Q**

\_\_\_\_\_

### **397-04-A**

APPLICANT - Petraro & Jones, LLP, for Jennifer Walker, owner.

SUBJECT - Application December 23, 2004 - An appeal to request the Board to determine that the apartment house at subject premises, is not a "single room occupancy multiple dwelling" and (2) nullify the Department of Buildings' plan review "objection" that resulted in this appeal application.

**MARCH 29, 2005, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 29, 2005, at 1:30 P.M., at 40 Rector

---

# CALENDAR

---

Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

*Pasquale Pacifico, Executive Director*

---

## ZONING CALENDAR

### 174-04-BZ

APPLICANT - Law Offices of Howard Goldman, PLLC for Harold Milgrim, Trustee.

SUBJECT - Application April 28, 2004 - under Z.R. §72-21 Proposed conversion of floors two through six, to residential use, Use Group 2, in an existing six-story commercial building, located in an M1-6 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 124 West 24th Street, south side, between Sixth and Seventh Avenues, Block 799, Lot 54, Borough of Manhattan.

### COMMUNITY BOARD #4M

---

### 201-04-BZ

APPLICANT - Eric Palatnik, P.C., for Marilyn Levine & Melvin Mesnick, Urban Spa, Inc., dba Carapan, lessee.

SUBJECT - Application May 14, 2004 - under Z.R. §73-36, to permit the legalization of an existing physical culture establishment, located in the basement level of a four story commercial structure, situated in a C6-2M zoning district, which requires a special permit.

PREMISES AFFECTED - 5 West 16th Street, between Fifth Avenue and Avenue of the Americas, Block 818, Lot 37, Borough of Manhattan.

### COMMUNITY BOARD #5M

---

### 209-04-BZ

APPLICANT - Joseph P. Morsellino, Esq., for Chilton Paint Co., owner; CPP Development, LLC, lessee.

SUBJECT - Application May 21, 2004 - under Z.R. §72-21 to permit the proposed six story residential building, with 134 dwelling units, Use Group 2, located in an M2-1 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 109-09 15th Avenue, northwest corner of 110th Street, Block 4044, Lot 60, Borough of Queens.

### COMMUNITY BOARD #7Q

---

### 68-94-BZ

APPLICANT - Fischbein Badillo Wagner & Harding for Bally Total Fitness, lessee

SUBJECT - Application January 21, 2005 - to Reopen and Extension of Term of a Special Permit for a Physical Cultural Establishment located on a portion of the first and second floor of the Bay Plaza shopping center which expired on November 11, 2004. Located in a C4-3 Zoning district. Minor interior layout change and signage change.

PREMISES AFFECTED - 2100 Bartow Avenue, south side, at the

**APRIL 5, 2005, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 5, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

---

## SPECIAL ORDER CALENDAR

### 348-82-BZ

APPLICANT - Salvati Architects for George Gong, owner.

SUBJECT - Application December 17, 2004 - Extension of Term/ Waiver/ Amendment, application seeks to legalize the change from three (3) storefronts (U.G. 6) to two (2) storefronts (U.G. 6 & 16D) located in an R5 zoning district. The application was approved under section 72-21 of the zoning resolution to permit in an R5 zoning district, the establishment of three (U.G. 6) storefronts for a term of 20 years which expired on April 12, 2003.

PREMISES AFFECTED - 204 Avenue S, Avenue S and West 6th Street, Block 7083, Lot 4, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

---

### 14-92-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for DG Equities and Greenwich Reade Associates, for TSI Greenwich Street, Inc., lessee.

SUBJECT - Application May 19, 2004 - request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired May 3, 2003 and for an amendment to the resolution to allow the operation of a physical culture establishment.

PREMISES AFFECTED - 311 Greenwich Street aka 151 Reade Street, southeast corner of Greenwich Street and Reade Street, Block 140, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #1M

---

eastern most side of Baychester Avenue, Bronx

### COMMUNITY BOARD #10BX

---

### 91-02-BZ

APPLICANT - Sheldon Lobel, P.C., for David Winiarski, owner.

SUBJECT - Application April 13, 2004 - reopening for an amendment to a previously granted variance under ZR§72-21 to

---

# CALENDAR

---

allow minor modification of the approved plans.

PREMISES AFFECTED - 3032-3042 West 22nd Street, West 22nd Street, 180' north of Highland View Avenue, Block 7071, Lot 19 (fka 19, 20, 22), Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

---

## APPEALS CALENDAR

### 232-04-A

APPLICANT -Snyder & Snyder LLP, c/o Omnipoint Communications, Inc., for Edward Zdanowicz, owner; Omnipoint Communications, Inc., lessee.

SUBJECT - Application June 18, 2004 - Proposed construction of a communications structure on a property that is not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED -17 Feldmeyers Lane, 130' from the intersection of Feldmeyers Lane and Victory Boulevard, Block 2660, Lot 63, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

---

**APRIL 5, 2005, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, April 5, 2005, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

---

## ZONING CALENDAR

### 294-04-BZ

APPLICANT - Petraro & Jones, LLP., by Patrick W. Jones, Esq., for 2478-61 Realty Corp., owner.

SUBJECT - Application August 26, 2004 - under Z.R. §72-21 proposed construction of a three family dwelling, Use Group 2, located in an R5 zoning district, which does not comply with the zoning requirements for front and side yards, is contrary to Z.R. §§23-45 and 23-49.

PREMISES AFFECTED - 103-05 35th Avenue, (a/k/a 34-29 35th Avenue), northeast corner of 103rd Street, Block 1744, Lot 43, Borough of Queens.

**COMMUNITY BOARD #3Q**

### 286-04-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT - Application August 18, 2004 - under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED - 85-78 Santiago Street, west side, 111.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13(tent.#13), Borough of Queens.

**COMMUNITY BOARD #8Q**

---

### 287-04-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT - Application August 18, 2004 - under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED - 85-82 Santiago Street, west side, 177' south of McLaughlin Avenue, Block 10503, Part of Lot 13(tent.#15), Borough of Queens.

**COMMUNITY BOARD #8Q**

---

### 290-04-BZ

APPLICANT - Stuart A. Klein, Esq., for Alex Lokshin - Carroll Gardens, LLC, owner.

SUBJECT - Application August 20, 2004 - under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED - 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #9BK**

---

### 371-04-BZ

APPLICANT - Eric Palatnik, P.C., for Hillel Kirschner, owner.

SUBJECT - Application November 22, 2004 - under Z.R. 73-622 to permit the 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.

PREMISES AFFECTED - 1271 East 28th Street, between Avenues "L and M", Block 7646, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

---

# CALENDAR

---

\_\_\_\_\_  
*Pasquale Pacifico, Executive Director*

**REGULAR MEETING  
TUESDAY MORNING, MARCH 8, 2005  
10:00 A.M.**

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

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, December 21, 2004, were approved as printed in the Bulletin of December 30, 2004, Volume 89, No. 52.

\_\_\_\_\_

**SPECIAL ORDER CALENDAR**

**1126-48-BZ**

APPLICANT - Sheldon Lobel, P.C., for Advance Parking LLC, owner.

SUBJECT - Application July 30, 2004 - Reopening for an extension of term of variance for an open garage for parking & storage of more than five(5) motor vehicles, located in C1-5 zoning district.

PREMISES - 249/51 West 43rd Street, north side of West 43rd Street, 200' east of 8th Avenue, Block 1015, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES -

For Applicant: Richard Lobel.

# MINUTES

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

**THE VOTE TO GRANT -**

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

**THE RESOLUTION -**

WHEREAS, this is an application for a reopening and, pursuant to Z.R. § 11-411, an extension of the term of the variance, which expired on October 29, 2004; and

WHEREAS, a public hearing was held on this application on February 15, 2005 after due notice by publication in The City Record, and then to decision on March 8, 2005; and

WHEREAS, on June 14, 1949, under the above referenced calendar number, the Board granted an application to permit the erection and maintenance of a parking garage for a term of fifteen years; and

WHEREAS, since the original grant, the applicant has obtained subsequent minor amendments and extensions of the term of the variance, the most recent extension being granted on November 18, 1997; and

WHEREAS, the subject garage is a five-story building, plus cellar and roof, with 219 parking spaces, and is located on West 43rd Street, between Seventh and Eighth Avenues; and

WHEREAS, the subject garage is in a neighborhood with many Broadway theaters and fulfills a need for parking in the area; and

WHEREAS, therefore, the Board finds that this application for an extension of term is appropriate to grant.

Therefore it is Resolved, that the Board of Standards and Appeals, reopens and amends the resolution, said resolution having been adopted on June 14, 1949, and subsequently amended and extended, and extends the term of the variance, which expired on October 29, 2004 so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the variance for an additional ten years from October 29, 2004 expiring on October 29, 2014; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this PREMISES AFFECTED - 761-773 Kent Avenue a/k/a 763 Kent Avenue, south frontage of Kent Avenue between Little Nassau Street and Flushing Avenue, Block 1884, Lots 36 & 33 (tent 36), Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**APPEARANCES -**

For Applicant: Juan Reyes.

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

**THE VOTE TO GRANT -**

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

**THE RESOLUTION -**

WHEREAS, this is an application for a reopening and an amendment of the plans previously approved by the Board in connection with a granted zoning variance; and

WHEREAS, a public hearing was held on this application on February 15, 2005, after due notice by publication in The City Record, and then laid over to March 1, 2005 for decision; and

WHEREAS, Community Board 3, Brooklyn, has recommended disapproval of this application; and

application marked "Received January 5, 2005"- (1) sheet and "Received February 18, 2005" - (9) sheets; and on further condition:

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

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

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

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

THAT any existing signage on the site shall remain as originally granted; no new signage is being approved herein.

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."

(DOB Application #103820732)

Adopted by the Board of Standards and Appeals, March 8, 2005.

**259-98-BZ**

**APPLICANT** - Davidoff Malito & Hutcher LLP by Howard S. Weiss, Esq., for Kent Plaza Realty Corp., owner.

**SUBJECT** - Application November 17, 2004 - reopening for an amendment to a previously granted variance for a multiple dwelling, located in an M1-2 zoning district.

WHEREAS, on October 16, 2001, the Board granted an application under Z.R. § 72-21, to permit within an M1-1 zoning district, the proposed erection of two multiple dwellings (Use Group 2), contrary to Z.R. § 42-00; and

WHEREAS, the applicant represents that the requested amendment arises from a new architect's suggestion that the subject premises offered opportunities for improved building design and added amenities for the building occupants within the zoning envelope approved by the Board; and

WHEREAS, the applicant is seeking the following proposed changes to the subject premises: (1) a relocation of the building's on-site recreation space from the basement to the roof; (2) a 30-ft. court yard in place of the 10-ft. rear yard equivalent provided under the approved plans; (3) a reduction in the floor area from 26,032 square feet to 25,999 square feet; (4) a reduction in the number of residential units from 20 to 16; (5) the creation of 10 parking spaces in the basement; (6) a reduction in lot coverage from 75.5% to 67%; (7) an increase in the open space ratio from 24.5% to 33%; (8) an decrease in the building's height at its mid-block section to 32'-11"; and (9) an increase in the building's height from 49'-4" to 60' at the corners formed by the intersection of Little Nassau Street,

---

# MINUTES

---

Kent Avenue and Flushing Avenue; and

WHEREAS, the Board recognizes that the building height will increase from 49'-4" to 60', or one story, at the above-mentioned corners, but that this is compensated for by a decrease in height at the mid-block section; and

WHEREAS, the applicant represents that the proposed use, bulk, and height are consistent with the neighborhood's existing character; and

WHEREAS, the Board notes that the previous Board approval assumed an R6A envelope and that the current proposal is within that envelope; and

WHEREAS, the applicant submitted an area survey that shows that there are buildings in proximity to the project site which are similar in height to the proposed building, including a 60-ft. high multiple dwelling located across the street from the project site, a 60-ft. high combined synagogue and school building located one block east from the project site and a 59-ft. high building that adjoins the project site to the north; and

WHEREAS, the applicant further represents that the proposed building changes will be accomplished in a manner that is consistent with the existing character of the neighborhood and remain consistent with the findings previously made by the Board pursuant to Z. R. § 72-21; and

WHEREAS, the Board finds that the applicant's proposed changes result in an approved building that is more compatible with the surrounding neighborhood than the plans that were previously approved; and

WHEREAS, based upon its review of the presented evidence, the Board finds that the requested amendment is appropriate to grant.

Therefore it is Resolved, that the Board of Standards and Appeals, reopens and amends the resolution, so that as amended this **490-69-BZ**

APPLICANT - Sheldon Lobel, P.C., for 300 East 74th Owners Corp., owner; GGMC Parking, LLC, lessee.

SUBJECT - Application September 2, 2004 - reopening for an extension of term of a variance for attended transient parking in a multiple dwelling presently located in a C1-9 and R8-B zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the multiple Dwelling Law.

PREMISES AFFECTED - 1408/18 Second Avenue, 303/09 East 73rd Street, 300/04 East 74th Street, east side of Second Avenue, 50' north of East 73rd Street, Block 1448, Lot 3, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** - Laid over to April 12, 2005, at 10 A.M., for continued hearing.

---

## 100-71-BZ

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

portion of the resolution shall read: "to permit an amendment of the plans previously approved by the Board in connection with a zoning variance that permits the development of a residential building on a site located in an M1-2 zoning district; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 17, 2004"- (4) sheets and "Received February 1, 2005"- (9) sheets; and on further condition:

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

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

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

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

THAT any permitted obstructions are subject to DOB review and approval;

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

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

(DOB Application No. 301862456)

Adopted by the Board of Standards and Appeals, March 8, 2005.

---

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

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

## COMMUNITY BOARD #1Q

APPEARANCES -

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** - Laid over to March 29, 2005, at 10 A.M., for continued hearing.

---

## 183-97-BZ

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for Daniel M. Frishwasser, owner; 250 East 60th Street Co., LP, lessee.

SUBJECT - Application September 10, 2004 - to reopen and extend the time and waiver of the Rules and Procedures, in which to complete construction and obtain a new certificate of occupancy pursuant to the resolution adopted by the board on September 15, 1998.

PREMISES AFFECTED - 250 East 60th Street, south side of

# MINUTES

East 60th Street, Block 1414, Lot 20, Borough of Manhattan.

## COMMUNITY BOARD#8M

APPEARANCES -

For Applicant: James P. Power.

**ACTION OF THE BOARD** - Laid over to March 29, 2005, at 10 A.M., for decision, hearing closed.

## 158-02-BZ

APPLICANT - Eric Palatnik, P.C., for Torah Academy For Girls, owner.

SUBJECT - Application September 15, 2004 - reopening for an amendment to extend the time to obtain a certificate of occupancy which expired October 8, 2004.

PREMISES AFFECTED - 444 Beach 6th Street, between Jarvis and Meehan Avenues, Block 15596, Lot 1, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES -

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** - Laid over to March 29, 2005, at 10 A.M., for decision, hearing closed.

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

## THE VOTE TO GRANT -

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

## THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination, set forth in a letter dated August 3, 2004, issued by the Manhattan Borough Commissioner of the New York City Department of Buildings ("DOB"), in response to inquiries by Michael S. Gruen, Esq. ("appellant") on behalf of "Neighbors for Light and Air", an organization of neighbors to the referenced premises (the "premises"); and

WHEREAS, this appeal challenges DOB's determination not to revoke approvals issued in connection with DOB Application No. 103256183 (the "application"), which authorized a proposed enlargement of floors three through five of the Allen-Stevenson School (the "school"), located at the premises; and

WHEREAS a public hearing was held on this application on November 23, 2004 after due notice by publication in The City Record, with a continued hearing on January 25, 2005, and then to decision on March 8, 2005; and

WHEREAS, both DOB and the school were represented by counsel in this appeal; and

WHEREAS, the August 3, 2004 final DOB determination states, in relevant part:

## APPEALS CALENDAR

### 273-04-A

APPLICANT - Michael S. Gruen , Esq. for Katrina Maxtone Graham , Felix C. Ziffer, Michelle R. Yogada, Stanley Ely. adjacent neighbors.

OWNER - Allen Stevenson School.

SUBJECT - Application August 5, 2004 - An Administrative Appeal challenging the Department of Building's final determination dated August 3, 2004 in which the Department refused to revoke approvals and permits which allow an enlargement of a school that violates the rear yard requirements under ZR Sections 33-26 and 33-301.

PREMISES AFFECTED - 128/32 East 78<sup>th</sup> Street and 121/23 East 77<sup>th</sup> Street, between (but not abutting) Park and Lexington Avenues, Block 1412, Lot 58, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Michael Gruen.

For Opposition: Marvin Mitzner.

For Administration: Felicia Miller, Department of Buildings.

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

## THE VOTE TO REOPEN HEARING -

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

## THE VOTE TO CLOSE HEARING -

"In response to your inquiry . . . the Department re-examined the Zoning Analysis for the applicant [the school] and finds that the Zoning Analysis for the applicant [the school] and finds that the approved building is acceptable, as proposed. Therefore, the Department of Buildings finds no cause to revoke any approvals or permits at this time."; and

WHEREAS, the premises is located almost entirely within a C1-8X zoning district; and

WHEREAS, the zoning lot at the premises consists of the referenced tax lots, and fronts 50 feet on East 77th Street and 70 feet, 8 inches on East 78th Street; on East 77th Street, it begins 38 feet 4 inches westerly of Lexington Avenue, and extends the entire depth of the block, which is 204'4"; and

WHEREAS, the site is currently improved upon with five separate buildings, all occupied by the School, including a five-story and two-story structure fronting on East 78th Street; the school seeks to enlarge the two story portion to five stories, and match up the floors of the enlarged portion with the existing five-story portion; and

WHEREAS, DOB represents that the school filed a job application on September 9, 2002 with the following job description: "Enlarge floors 3-5 of an existing school. New construction to comply with code. Misc. interior partitions for classrooms and hallways."; and

WHEREAS, DOB states that the plans filed with the application also show that the school intends to expand the structure into the courtyard area to the rear of the five-story portion and adjacent to the two-story portion; and

WHEREAS, the application was approved on December 12, 2003, and DOB issued a permit for the proposed alteration on

---

# MINUTES

---

October 18, 2004; and

WHEREAS, the approved plans do not show the provision of a rear yard; and

WHEREAS, appellant maintains that a rear yard is required, and that the proposed development therefore should not have been approved by DOB; and

WHEREAS, DOB states that while Z.R. § 33-26 generally requires that a 20 foot rear yard be provided for the proposed development on a zoning lot such as the subject lot, such that the space currently existing above the two-story portion of the building, as well as the courtyard, would have to be retained as a rear yard, certain exceptions exist; and

WHEREAS, specifically, Z.R. § 33-30 ("Other Special Provisions for Rear Yards") provides that in C1 zoning districts, the rear yard requirements of Z.R. §33-26 are modified in accordance with the provisions set forth at Z.R. § 33-30 et seq.; and

WHEREAS, the particular modifying provision that is the primary focus of the instant appeal is ZR §33-301 ("33-301"), which provides, "In all districts as indicated [including C1 districts], no rear yard shall be required within 100 feet of the point of intersection of two street lines intersecting at an angle of 135 degrees or less."; and

WHEREAS, the fundamental inquiry of the appeal is how 33-301 should be applied; and

WHEREAS, the Board observes that an arc measurement, had one been irrefutably intended as appellant argues, could either have been explicitly called for in the language of 33-301 or at least illustrated by the drafters of the provision; and

WHEREAS, the Board notes that many Z.R. provisions have been the subject of interpretative appeals before the Board for the precise reason that the language in said provisions is often imprecise and therefore subject to reasonable interpretation; and

WHEREAS, the Board concludes that such is the case here; and

WHEREAS, therefore, the Board rejects appellant's arc measurement theory as the only logical reading of 33-301, and finds DOB's efforts to interpret this section appropriate given the ambiguous language, and consonant with its authority to both interpret and administer the Z.R. subject to BSA review; and

WHEREAS, however, even assuming that 33-301 is subject to interpretation, appellant's arc theory is still one possible interpretation, and the Board therefore carefully considered the testimony of the parties as to this theory; and

WHEREAS, appellant supports the argument that the arc theory is a reasonable way to approach 33-301 by noting that an arc measurement is a methodology used in other provisions of the Z.R.; and

WHEREAS, specifically, appellant cites to particular Z.R. provisions where an arc measurement is indicated, such as Z.R. § 32-01 (no adult establishments within 500 feet of a church or school) or Z.R. § 81-251 (setback lines in the Special Midtown zoning district), among others; and

WHEREAS, however, DOB observes that none of the provisions cited by appellant concern rear yard requirements; and

WHEREAS, DOB states that its review of certain rear yard-related provisions in the Z.R. supports the conclusion that measurements for rear yard purposes should be taken in a manner other than an arc; and

WHEREAS, appellant argues that 33-301 demands no interpretation, and claims instead that it is obvious that the only proper way to measure "within 100 feet of the point of intersection of two street lines" is to draw an arc of 100 feet from the point of intersection and only exempt from the rear yard requirement those portions of affected lots that fall within the area of the arc (hereinafter referred to as the "arc theory"); and

WHEREAS, DOB observes that 33-301 applies to lots that are not directly adjacent to an intersection, and thus does not provide guidance on whether the 100 feet should be measured only along the street line on which the zoning lot fronts, or whether it should be measured along two street lines as if it were a corner lot; and

WHEREAS, DOB also observes that language in other Z.R. sections concerning rear yard exemptions use dissimilar, more clearly defined language, thus reinforcing the notion that 33-301 is ambiguous and subject to interpretation; and

WHEREAS, the Board disagrees with appellant that the language of 33-301 is so clear that it must be read in the way appellant claims; and

WHEREAS, instead, the Board agrees with DOB that the language of 33-301 is ambiguous and subject to interpretation; and

WHEREAS, specifically, DOB cites to the definitions of "rear yard" and "rear lot line" set forth in Z.R. §12-10, neither of which indicate that an arc should be used, but instead require the drawing of lines perpendicular to lines; and

WHEREAS, DOB also notes that Z.R. §33-24 ("Measurement of Yard Width or Depth") provides that in all commercial districts, the width or depth of a rear yard shall be measured perpendicular to lot lines; and

WHEREAS, in addition to its citation of comparable provisions, DOB notes that, as a long-standing policy, it has consistently applied 33-301 by measuring the extent of the rear yard exemption through the drawing of lines 100 feet from and parallel to the street lines, and perpendicular to each other (hereinafter referred to as the "square theory"); and

WHEREAS, additionally, the school notes that block development within the City, especially in Manhattan, is often characterized by high-density development up to 100 feet in depth from the avenues, with rear yard space typically required beyond 100 feet; and

WHEREAS, acceptance of appellant's arc theory would, as noted by the school, obliterate this design by requiring rear yards at 60 feet from the avenue street line, assuming a 90 degree point of intersection between the street and avenue; and

WHEREAS, the Board, which consists of two former DOB commissioners, agrees that DOB has never used an arc measurement when applying 33-301, but has instead been guided by a square theory; and

WHEREAS, further, the school agrees with DOB, stating that the language of 33-301 is similar to that of the definition of corner lot in Z.R. § 12-10, which provides that a corner lot is a zoning lot "which adjoins the point of intersection of two or more streets"; and

WHEREAS, the school states, and the Board agrees, that corner lots have always been measured perpendicular and in a straight line from the street lines (in other words, by applying the

---

# MINUTES

---

square theory) and that there is no logical reason to treat the exemption provided for in 33-301 differently; and

WHEREAS, accordingly, the Board agrees with DOB and the school that it is appropriate to measure the area of exemption provided for in 33-301 by construing the phrase "within 100 feet of the point of intersection" to mean a square extending 100 feet in each direction, one corner of which is at the intersection, two sides of which coincide with the street lines, and two sides of which coincide with lines drawn parallel to and 100 feet from the street lines; and

WHEREAS, thus, the Board concludes that the permit was appropriately issued as to that portion of the development site that is within the 100 ft. by 100 ft. square provided for by 33-301; and

WHEREAS, appellant's second argument is that even if one assumes that the square theory is the correct interpretation of 33-301

WHEREAS, however, DOB states that it modifies the application of the square theory slightly for lots that are within 100 feet of the short dimension of the block; and

WHEREAS, specifically, for lots that front on one street and that are within 100 feet of a street line measuring less than 230 feet in length, DOB states that it measures the 100 feet along the street line on which the zoning lot fronts (where the zoning lot fronts on only one street.); and

WHEREAS, DOB further states that this 100 feet defines the frontage area for which no rear yard is required, meaning that for that portion of the zoning lot that is within 100 feet of said intersection, no rear yard is required for the entire depth of the zoning lot; and

WHEREAS, thus, DOB exempts from the rear yard requirement all area within one hundred feet from the avenue so long as the street in question is less than 230 ft.; and

WHEREAS, DOB states that it bases this interpretation of 33-301 on its review of other sections of the Z.R., so that its interpretation is consistent in terms of intent and results with such sections; and

WHEREAS, in particular, DOB points to ZR § 33-302 ("33-302"), which provides that in C1 districts, whenever a front lot line of a zoning lot coincides with all or part of a street line measuring less than 230 feet in length between two intersecting streets, no rear yard shall be required within 100 feet of such front lot line; and

WHEREAS, DOB states that 33-302 thus permits a rectangle of build-up measuring 100 ft. up to 230 ft. along the corners of blocks that measure less than 230 feet by specifically exempting such area from the rear yard requirement; and

WHEREAS, DOB observes that the beginning of Z.R. § 33-30 provides that, "In all districts, as indicated, the rear yard requirements set forth in Z.R. § 33-26 shall be modified as set forth in this Section" and that 33-302 is part of ZR § 33-30; and

WHEREAS, DOB also argues that the situations are comparable, because both Z.R. sections apply to the rear yard requirements for lots with area falling within 100 feet of intersecting street lines; and

WHEREAS, further, DOB observes that 33-302 is also consistent with the full coverage construction within 100 feet of corners that is described in other Z.R. sections; and

WHEREAS, DOB cites to Z.R. § 33-26, which exempts corner lots from the rear yard requirement; and

WHEREAS, DOB also cites to ZR § 12-10's definition of

as applied to that portion of the development site that is within the 100 ft. by 100 ft. square, since a portion of the site is beyond the 100 ft. boundary of the square-shaped area of exemption (the block is approximately 204 ft. long), a rear yard for the remaining portion of the lot (here, approximately 2 ft.) must be provided; and

WHEREAS, appellant contends that even if a square theory is accepted by the Board, DOB must revoke the issued permit on this basis; and

WHEREAS, the Board notes that, without any modification in the application of the square theory, 33-301 does allow for this 100 ft. by 100 ft. square shaped exemption regardless of lot lines, such that a zoning lot could be both within the area of exemption for a portion of the lot, and then subject to a rear yard requirement for the remainder, as appellant contends; and

"corner lot", which provides that "The portion of such zoning lot subject to the regulations for corner lots is that portion bounded by the intersecting street line and lines parallel to and 100 feet from each intersecting street line."; and

WHEREAS, DOB also notes that the school could merge its lot with one that fronts on the avenue, and thus utilize 33-302 to eliminate all rear yard requirements; and

WHEREAS, the Board observes that if a yard requirement could be eliminated through an as-of-right merger, than the import of the provision purportedly triggering the yard requirement is diminished; and

WHEREAS, the Board finds that this supports the logic of DOB's interpretation; and

WHEREAS, the Board also notes that 33-302 and 33-301 were enacted at the same time; thus, it is appropriate to utilize 33-302 as a guide in interpreting 33-301; and

WHEREAS, thus, the Board finds DOB's arguments persuasive, and logical in light of the goals of zoning and yard regulations within the City; and

WHEREAS, the Board notes, however, that it reaches this conclusion based on the logic of interpreting provisions in light of each other, rather than on the theory that the DOB interpretation avoids objectionable results; while the interpretation may in fact avoid objectionable results as applied to the facts at hand, it may not do so in all cases; and

WHEREAS, in sum, the Board agrees with DOB's application of Z.R. § 33-301 when the block length is less than 230 feet, as the resulting area of exemption is the same as would arise under 33-302; and

WHEREAS, the appellant, in subsequent submissions, cites to hypothetical examples of block and lot configurations that allegedly show that DOB's interpretation would not work under all circumstances; and

WHEREAS, the Board, in reviewing the instant appeal, is limited to the facts at hand and the final DOB determination, and need not determine the appropriateness of applying DOB's interpretation to every possible fact pattern; and

WHEREAS, the Board observes in passing that certain of the examples cited, if the site was developed in the way appellant illustrates, could conceivably lead to a requirement for a small segment of rear yard, but this does not necessarily mean that a full rear yard would not be actually built; and

---

# MINUTES

---

WHEREAS, as noted above, the Board is concerned about whether an interpretation of the relevant provision is logical and consistent with comparable Z.R. provisions, notwithstanding the fact that it may occasionally lead to results that are arguably questionable; and

WHEREAS, during the course of this appeal, appellant made numerous statutory interpretation arguments, alleging that the Board must approach its analysis of the appeal in a particular way; and

WHEREAS, DOB and the school responded with statutory

WHEREAS, the Board observes that DOB has consistently applied the presented interpretations, and draws upon the personal experience of two of its members, both former DOB commissioners, in support of this observation; and

WHEREAS, moreover, given the other Z.R. provisions that allow for rear yard exemptions for lots in relation to corners or along avenues shorter than 230 ft. in length, DOB's interpretation of 33-301, made in light of said provisions, makes more sense than appellant's, which relies not on comparable provisions but on wholly unrelated provisions; and

WHEREAS, in sum, the Board finds that DOB's interpretation is reasonable; therefore, the exemption of the school's development proposal from any rear yard requirement, as reflected in the DOB-approved plans, was correct, and the approval and permit were appropriately issued; and

WHEREAS, appellant made other supplemental arguments in support of this appeal, all of which the Board finds unpersuasive in light of the counter-arguments proffered by DOB and the school, as reflected in the record.

Therefore it is resolved that the final determination of the New York City Department of Buildings, dated August 3, 2004, is upheld and this appeal is denied.

Adopted by the Board of Standards and Appeals, March 8, 2005.

---

## 271-04-A

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

SUBJECT - Application August 3, 2004 - An appeal challenging the

Department of Buildings jurisdiction to issue summons to subject property, on the grounds that the NYC Department of Business Services has exclusive jurisdiction over The "Barge".

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

APPEARANCES -

For Applicant: Michele Luzio.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan,, Commissioner Miele and Commissioner Chin.....3

Recused: Vice-Chair Babbar .....1

Negative:.....0

ACTION OF THE BOARD - Laid over to March 8, 2005, at 10 A.M., for continued hearing.

---

*Pasquale Pacifico, Executive Director.*

interpretation arguments of their own; and

WHEREAS, the Board recognizes the inherent complexity of the City's Zoning Resolution, and thus looks to certain guiding principles when a Z.R. provision is before it; and

WHEREAS, specifically, the Board is guided in large measure by the past practice of the agency administering the Z.R. (DOB) and the logic of the arguments presented in light of what other comparable provisions exist in the Z.R.; and

Adjourned: 10:25 A.M.

## REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 15, 2005 2:00 P.M.

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

## ZONING CALENDAR

### 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.

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: Jordan Most.

ACTION OF THE BOARD -Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated March 24, 2003, acting on Department of Buildings Application No. 301429069, reads, in pertinent part:

"Proposed development of a residential building is not permitted within an M3-1 Zoning District as per Section 42-00 of the Zoning Resolution"; and

WHEREAS, a second decision of the Borough Commissioner, dated January 10, 2005, acting on Department of Buildings Application No. 301429069, reads, in pertinent part:

"Proposed building does not provide rear yard as required by

# MINUTES

ZR 43-26 and ZR 43-28"; and

WHEREAS, a public hearing was held on this application on February 24, 2004 after due notice by publication in the City

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 Miele and Chin; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the City Planning Commission ("CPC") opposed the application at the initial hearing due to concerns related to the proximity of the site to the Domino Sugar Plant and the maintenance of the district as a viable manufacturing district; and

WHEREAS, it was announced in August of 2003 that the Domino Sugar Plant would be shutting down its refinery at the site; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an M3-1 zoning district, the proposed development of eight contiguous and vacant lots with two residential buildings and one commercial building, with 29 parking spaces accommodated in the rear yard between the two residential buildings, contrary to Z.R. §§ 42-00, 43-26 and 43-28; and

WHEREAS, the premises is located on portion of Block 2415 between South Second Street and South Third Street, and Kent Avenue and Wythe Avenue; and

WHEREAS, the lot is an L-shaped lot, part of which is a through lot and part of which is a corner lot, with a frontage of approximately 197 ft. on South Second Street and 88 ft. on South Third Street; and

WHEREAS, the current version of this application proposes the construction of two 45 ft. (total height excluding mechanicals), four-story residential buildings with a total floor area of 49,152 s.f. and an F.A.R. of 2.0, one commercial building with a floor area of 3,212 s.f. and an F.A.R. of 0.13, and 29 parking spaces for the residential tenants accommodated in the rear yard between the two residential buildings; and

WHEREAS, the original version of this application proposed two 125 ft. (total height excluding mechanicals), eleven-story residential buildings with a total floor area of 122,905 s.f. and a floor area ratio ("F.A.R.") of 5.0, an underground accessory parking area and an open recreation space between the two buildings; and

WHEREAS, upon the request of the Board, the applicant submitted a revised application on December 4, 2003 that proposed two 103 ft., nine-story residential buildings with a total floor area of 99,045 s.f. and an F.A.R. of 4.03, an underground accessory parking area and an open recreation space between the two buildings; and

WHEREAS, the applicant submitted a further revised application on June 8, 2004 that proposed two 55 ft., five-story residential buildings and one 70 ft., six-story building, with a total floor area of 72,807 s.f. and an F.A.R. of 2.96, an underground accessory parking area and open recreation space on top of one of the buildings; and

WHEREAS, the applicant subsequently submitted a revised application on July 27, 2004 that contemplated two 55 ft. five-story

WHEREAS, the applicant prepared a revised feasibility study at the Board's request, reflecting a reduction in the proposed project's

Record; with continued hearings on April 12, May 11, June 22, August 10, October 5, and December 7, 2004, and January 25, 2005, and then to decision on March 8, 2005; and residential buildings (total height excluding mechanicals) with a total floor area of 54,078 s.f. and an F.A.R. of 2.2 and 30 parking spaces accommodated in the rear yard between the two residential buildings; and

WHEREAS, after further review and comment by the Board, the application was modified to the current version; 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 conformance with underlying district regulations: (i) the site is undeveloped; (ii) the site is sloped; (iii) the site is irregularly shaped; (iv) the site is functionally narrow; (v) the site has frontage on narrow streets and therefore is not suitable for truck access; and (vi) the site has certain subsurface conditions that will necessitate considerable site preparation; and

WHEREAS, the applicant states that the site slopes upward from Kent Avenue heading east on South 2nd Street and it slopes upward from South 3rd Street across to South 2nd Street; and

WHEREAS, the applicant represents that because of the irregular shape of the site, the usable width of the parcel is only 59 ft., and

WHEREAS, the applicant represents that there is only loading frontage on narrow streets, and that such streets would provide poor access for large trucks and make commercial use of the site difficult; and

WHEREAS, the Board finds that these site conditions affect the viability of conforming one-story manufacturing or office development; and

WHEREAS, the applicant states that a ground penetrating radar probe was conducted on the site, and although the tests did not reveal the presence of steel or reinforced concrete foundations, further site work should be carried out as the probe is suggestive of an abandoned underground storage tank; and

WHEREAS, the Board notes that any cost associated with the sub-surface conditions is speculative at this point and does not form the basis of hardship; and

WHEREAS, accordingly, the Board finds that certain of the unique conditions mentioned above, namely, the slope of the site, the irregular shape of the lot, the functional narrowness of the lot and the frontage of the site on narrow streets, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformity with applicable zoning regulations; and

WHEREAS, the applicant submitted an initial feasibility study that analyzed three alternative uses of the property, including a conforming manufacturing use, a conforming office use and the proposed residential use; and

WHEREAS, the applicant concluded that a conforming manufacturing or office development would not realize a reasonable return due to the site's constraints, but that the originally proposed residential building would; and

F.A.R., height and density; and

WHEREAS, the applicant submitted another revised feasibility

---

# MINUTES

---

study at the Board's request. reflecting a further downward adjustment in F.A.R. and including an adjustment in projected condominium sales income to reflect recent market trends; and

WHEREAS, however, the Board was still not convinced that a proposal with a lower F.A.R. was infeasible; and

WHEREAS, the Board then asked the applicant to consider the feasibility of a rental development instead of a condominium; and

WHEREAS, the applicant concluded that although a rental development would have somewhat reduced hard and soft costs, it was unlikely that it would be economically feasible; and

WHEREAS, the Board then asked the applicant to consider an alternative development that would: (1) provide for a commercial component; and (2) reduce total residential floor area; and

WHEREAS, the applicant subsequently modified the application to the current proposal; and

WHEREAS, the Board also notes that the applicant made legitimate, but unsuccessful, marketing attempts to rent the site to as-of-right users, including advertising the site in a newspaper and listing the site with a broker; and

WHEREAS, the Board also asked the applicant to consider whether a parking lot would be a viable and conforming alternative use of the property and referred to a proposal contemplating the same prepared by a member of the community; and

WHEREAS, the applicant studied the issue and concluded that such use of the property would not represent a feasible real estate investment as claimed in the study, because the study was based upon unrealistic occupancy assumptions and inaccurate real estate tax assumptions; and

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

WHEREAS, the Board initially shared CPC's concerns about the impact of a new residential building in the area in light of its proximity to the Domino Sugar Plant but acknowledges that these concerns are no longer pressing given the closure of the plant; and

WHEREAS, the applicant states that the block on which the site is located and the blocks immediately to the south and north of the site have significant amounts of undeveloped land and vacant buildings; and

WHEREAS, the applicant conducted a detailed land use survey of the area, focusing on the blocks from Grand Street to South Fifth Street, between Kent and Wythe Avenues, and submitted such survey to the Board; and

WHEREAS, the Board notes that the survey reflects that the area surrounding the site has less high-intensity manufacturing and is

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

WHEREAS, the Office of Environmental Planning and

characterized more by vacant lots and other low-intensity uses, such as warehouses; specifically, the subject block has approximately 36,081 s.f. of vacant lot area out of a total of 105,000 s.f., and the block directly across South 2nd Street from the subject block has approximately 53,239 s.f. of vacant lot area out of a total of 106,000 s.f.; and

WHEREAS, the Board observes that because there is very little high-intensity manufacturing in the surrounding area, but many vacant parcels, the introduction of a residential building would not affect the character of the neighborhood; and

WHEREAS, the Board asked the applicant to consider concerns from community members, who stated that there is a need for active conforming uses in the neighborhood and that the height of the proposed building was not in line with other buildings in the neighborhood; and

WHEREAS, in response, the applicant modified its proposal to: (1) include a commercial building with frontage on Kent Avenue, which reinforces the commercial and manufacturing nature of Kent Avenue; and (2) further reduce the building height from five stories to four stories; and

WHEREAS, the Board notes that the currently proposed building is more compatible with previously proposed versions because the height and F.A.R. of the residential buildings has been significantly reduced, and because a commercial building is now proposed for the site; and

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

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

WHEREAS, after taking direction from the Board as to the proper amount of relief given the amount of actual hardship on the site, the applicant modified the development proposal to the current version; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 03-BSA-160K, dated August 21, 2003; and

Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated August 21, 2003; (2) a CEQR submission regarding a fifty-year site history of the subject site and the adjacent lots and other items from the applicant's consultant, dated January 30, 2003; (3) an updated project description, dated November 18, 2004; (4) a January 2002 Phase I Environmental Site Assessment Report; and (5) an air quality response prepared by the consultant, dated February 15, 2005; and

---

# MINUTES

---

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality and noise impacts; and

WHEREAS, a Restrictive Declaration was executed and recorded for the subject property to address hazardous materials concerns; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the applicant's responses and the implementation of the measures cited in the Restrictive Declaration, as well as the applicant's agreement to the condition noted below; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, within an M3-1 Zoning District, the proposed development of eight contiguous and vacant lots as two residential buildings and one commercial building with 29 parking spaces accommodated in the rear yard between the two residential buildings, contrary to Z.R. §§ 42-00, 43-26 and 43-28; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 31, 2005" - (13) sheets; and on further condition:

THAT a minimum of 35 dB(A) window/wall noise attenuation for all facades shall be provided for the two proposed residential buildings;

THAT the bulk parameters of the proposed buildings shall be as follows: a total F.A.R. of 2.13 (with 2.0 for the residential buildings and 0.13 for the commercial building); and a total height for each of the residential buildings of 45 ft. (excluding mechanicals);

THAT a total of 29 parking spaces shall be provided in the accessory parking lot;

THAT the cellar rooms in the residential buildings, as illustrated on the BSA-approved plans shall be accessory to the residential use, but shall not be habitable rooms;

SUBJECT - Application August 25, 2004 - under Z.R. §72-21 in an R3-1 district, approval sought to enlarge an existing Yeshiva (Torah Academy High School for Girls). It is proposed to add four classrooms, bringing the total number of classrooms to 22; a new multi-purpose room, and the enlargement of an existing auditorium/gymnasium/multi-purpose room. The application seeks waivers from floor area, wall height, side yard, rear yard and sky exposure plane requirements.

PREMISES AFFECTED - 610 Lanett Avenue, north west side of Lanett Avenue, 200' east of Beach 8th Street, Block 15596, Lot 7, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES -

For Applicant: Eric Palatnik.

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

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

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

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

Adopted by the Board of Standards and Appeals, March 8, 2005.

---

## 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 74<sup>th</sup> Street, west side, 169' south of Juniper Valley Road, Block 3058, Lot 35, Borough of Queens.

## COMMUNITY BOARD #5Q

APPEARANCES - None.

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

## THE VOTE TO WITHDRAW -

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

Adopted by the Board of Standards and Appeals, March 8, 2005.

---

## 293-04-BZ

APPLICANT - Eric Palatnik, P.C., for Torah Academy For Girls, owner.

## THE VOTE TO GRANT -

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

## THE RESOLUTION:

**WHEREAS, the decision of the Borough Commissioner, dated November 8, 2003, acting on Department of Buildings Application No. 401972371, reads:**

- "1. Proposed floor area is contrary to ZR 24-11.**
- 2. Proposed wall height is contrary to ZR 24-521.**
- 3. Proposed side yard is contrary to ZR 24-35.**
- 4. Proposed rear yard is contrary to ZR 24-33.**
- 5. Proposed sky exposure plane is contrary to ZR 24-521.**
- 6. Proposed lot coverage is contrary to ZR 24-11.";**

---

# MINUTES

---

and

WHEREAS, a public hearing was held on this application on February 15, 2005 after due notice by publication in The City Record, and then to decision on March 8, 2005; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit, within an R3-1 zoning district, the expansion of an existing religious school, which does not comply with applicable district requirements for Floor Area Ratio ("F.A.R."), wall height, side yard, rear yard, sky exposure plane and lot coverage, contrary to Z.R. §§ 24-11, 24-521, 24-35, and 24-33; and

WHEREAS, this application is brought on behalf of the Torah Academy High School for Girls, a not-for-profit entity (hereinafter, the "School"); and

WHEREAS, the School was incorporated in 1963 with the mission of providing a superior and dedicated secular and religious education for young Jewish women; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, the subject site is currently improved upon with a three-story building with a total floor area of 27,000 sq. ft., occupied by the School; the School houses seventeen classrooms, a pool area, a multi-purpose room and five offices; and

WHEREAS, the applicant proposes to construct an approximately 5,700 sq. ft. addition to the existing School building to house four additional classrooms, a new multi-purpose room, a small enlargement of the existing auditorium/gymnasium and a meat kitchen and storage area; and

WHEREAS, construction of the addition as currently proposed will result in the following non-compliances: an F.A.R. of 1.3 (1.0 is the maximum permitted); a wall height of 34 ft., 5 in. (25 ft. is the maximum permitted); lot coverage of

WHEREAS, the applicant represents that the School is limited by its space in the following ways: the auditorium in the school currently serves as a multipurpose room for meetings and assemblies, a gymnasium and a lunchroom; the entire student body is too large to assemble in the auditorium at one time; the student lounge, typically a place for students to congregate during breaks, has been used as a make-shift classroom because of lack of classroom space; and the School does not have adequate office space for its guidance staff and teachers to consult with students and prepare in between classes; and

WHEREAS, the Board agrees that, based upon the submitted evidence, the enlargement is necessary in order to meet the programmatic needs of the School; and

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

WHEREAS, the Board finds that the applicant need not

58.7% (55% is the maximum permitted); side yards of 19 ft. and 20 ft., 5 in. (23 ft., 4.5 in. is the minimum required); a rear yard of 1 ft., 5 in. (30 ft. is the minimum required); and a sky exposure plane of 34 ft., 5 in. (25 ft. is the minimum required); 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 compliance with underlying district regulations: (1) the School building has insufficient space for necessary programs as it was not designed to accommodate the increased enrollment of the School and the resulting programmatic needs; (2) the lot is a uniquely triangular-shaped site; and (3) sub-surface conditions exist on the lot; and

WHEREAS, the applicant has submitted a boring report that shows that groundwater is reached at a depth of seven feet below grade; and

WHEREAS, the applicant states that there is no cellar or basement on the lot and the only extension on the lot below grade is the elevator pit and an area for water pumps to release water that accumulates in the elevator pit; and

WHEREAS, the applicant further represents that the high water table prevents the applicant from constructing a cellar or a basement; and

WHEREAS, the Board recognizes that the triangular shape of the lot and the high water table are unique conditions inherent to the subject site; and

WHEREAS, the applicant states that the following are the programmatic needs of the School, all of which have been driven by an over 50 percent increase in enrollment over the past seven years, from an initial enrollment of 160 students to the current enrollment of 270 students: (1) more classroom space to ensure a low teacher-to-student ratio; (2) a multipurpose room to accommodate the entire student population for assemblies and daily religious services; and (3) offices for guidance staff and teachers; and

address Z.R. § 72-21(b) since the applicant is a not-for-profit organization and the enlargement will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant represents that the proposed bulk is consistent with the bulk of other community facilities in the immediate vicinity of the School; and

WHEREAS, the applicant represents that traffic impacts will be minimal, as the proposed expansion will not change, move or alter the existing student drop-off area; and

WHEREAS, the applicant represents that although it is planning to increase enrollment by 70 students, it is expected that this will be achieved over several years; and

WHEREAS, the applicant presented projections that showed that based on a maximum number of 70 new students, there is the potential for nine or ten new carpool vehicle trips and 14 pedestrian trips; and

WHEREAS, the applicant concludes that these additional

---

# MINUTES

---

trips are not likely to have a significant effect on traffic flow, operating conditions, parking, vehicular and pedestrian safety; and

WHEREAS, the New York City Department of Transportation ("DOT") concurred with this conclusion; and

WHEREAS, in addition, the Board notes that the applicant has agreed to a condition that a traffic monitor will be present in front of the school during drop-off and pick-up times, as recommended by the City's Department of Transportation; and

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

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

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the School 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. 05-BSA-034Q, dated December 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;

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 the required findings under Z.R. § 72-21, to permit, within an R3-1 zoning district, the expansion of an existing religious school, which does not comply with applicable district requirements for F.A.R., wall height, side yard, rear yard, sky exposure plane and lot coverage, contrary to Z.R. §§ 24-11, 24-521, 24-35, and 24-33; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 9, 2005" - (8) sheets; and marked "Received February 22, 2005" - (1) sheet; and on further condition:

THAT a traffic monitor shall be present in front of the school during drop-off and pick-up times;

THAT the masonry refuse storage area shall be enclosed and located on the site as shown on the BSA-approved plans;

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

THAT this approval is limited to the relief granted by the

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

WHEREAS, the School Safety Engineering Division of the New York City Department of Transportation (DOT) has reviewed the following submissions from the Applicant as noted in a letter dated December 21, 2004: (1) an Environmental Assessment Statement Form, dated August 25, 2004; and (2) a response memorandum dated December 13, 2004;

WHEREAS, these submissions specifically examined the proposed action for potential impacts regarding student pedestrian safety; and

WHEREAS, DOT has made the following recommendations regarding student pedestrian safety which have been agreed upon by the applicant in a letter dated February 22, 2005: (1) a safe area for student drop-off by buses and car-pools is to be provided; (2) a traffic monitor / school crossing guard is to be present in front of the school during drop-off and pick-up times; and

WHEREAS, DOT has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in their letter dated December 21, 2004, and the Applicant's agreement to the conditions noted above;

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.

Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, March 8 2005.

---

## 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

# MINUTES

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

APPEARANCES - None.

ACTION OF THE BOARD -Application granted on condition.

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

## THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated August 24, 2004, acting on Application No. 500734066, reads in pertinent part:

"Proposed monopole (Use Group 6) is contrary to NYC Department of Buildings Technical Policy and Procedure Notice 5/98 and therefore not allowable within R3-2 District (Special South Richmond Development). Refer to the Board of Standards and Appeals for review pursuant to section 73-30 of the NYC Zoning Resolution."; and

WHEREAS, a public hearing was held on this application on January 25, 2005, after due notice by publication in the City Record, and then to decision on March 8, 2005; and

WHEREAS, this is an application under Z.R. §§ 73-30 and 73-03, to permit the erection of a communication facility in an

WHEREAS, the applicant further represents that the pole has been designed and sited to minimize adverse visual effects on adjacent residents; and

WHEREAS, the proposed communication facility will be constructed in the northeast corner of the property at the greatest permissible distance from nearby residential development, and will be surrounded by existing mature trees, additional plantings and an 8-ft. tall stockade fence; and

WHEREAS, the applicant states that the monopole will provide improved wireless communications services to the neighboring community, including essential access to emergency services; and

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

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

WHEREAS, the Board 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;

R3-2 zoning district (Special South Richmond District), which, pursuant to Z.R. § 22-21, requires a special permit; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the applicant must also receive approval from the City Planning Commission; and

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

WHEREAS, the proposed communication facility will consist of: (1) a one-hundred ft. above grade level flagpole; (2) six wireless communications antennas (three sectors, with two antennas per sector) affixed within the flagpole, with a maximum height of one hundred ft.; (3) a communications equipment shelter measuring 12' x 30'; (4) a backup generator located inside the equipment shelter; and (5) all necessary wires, cables, conduits, fencing and other essential appurtenances; and

WHEREAS, the applicant states that the proposed monopole will be located on a portion of a site currently occupied by a community facility, situated at the corner of Richmond Avenue and Wainwright Avenue; and

WHEREAS, pursuant to Z.R. § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds "that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood."; and

WHEREAS, the applicant represents that the proposed communications facility will not pose any significant adverse effect to the privacy, quiet, light or air of the neighboring community, nor will it produce any noise, dust, odors or light emissions; and

and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR. NO. 05-BSA-036R, dated February 25, 2005; 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

# MINUTES

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and grants a special permit under Z.R. §§ 73-30 and 73-03, to permit the erection of a communication facility in a R3-2 zoning district (Special South Richmond District), which, pursuant to Z.R. § 22-21, requires a special permit; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 22, 2005"- (3) sheets; and on further condition:

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

THAT any fencing and landscaping will be maintained in accordance with BSA approved plans and any CPC approved plans;

THAT no commercial or retail signage will be posted;

THAT any lighting will be positioned down and away from residential uses;

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

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

THAT the flag shall be replaced a minimum of one time per year, and more frequently as required, due to wear and tear or damage;

THAT the proposed tower will be constructed so as to ACTION OF THE BOARD -Application granted on condition.

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner dated September 3, 2004, acting on Department of Buildings Application No. 301046981, reads:

"Proposed Physical Culture Establishment is not permitted as-of-right in M1-1 zoning districts and is contrary to ZR 42-10. Provide Board of Standards and Appeals Special Permit as required under ZR 73-36"; and

WHEREAS, a public hearing was held on this application on March 1, 2005 after due notice by publication in The City Record, and then to decision on March 8, 2005; and

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

WHEREAS, Community Board No. 1, Brooklyn, recommends approval of this application; and

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, a proposed physical culture establishment within an existing one-story plus mezzanine commercial building that was previously enlarged as-of-right; and

WHEREAS, the subject building has a total floor area of 7,480

allow for the co-location of other antennas;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 8, 2005.

## 300-04-BZ

APPLICANT - Malcolm Kaye of Aston Associates, for Jimmy Tuohy, Eurostruct, Inc, owner; Diana Zelvin, lessee.

SUBJECT - Application filed September 9, 2004 - under Z.R. Section 73-36 to permit a proposed physical cultural establishment located on the first and second floor of a two story commercial building, within an M1-1 Zoning district.

PREMISES AFFECTED - 66 Huron Street, south of West Street and Franklin Street, Block 2531, Lot 12 Borough of Brooklyn.

## COMMUNITY BOARD #3BK

APPEARANCES -

For Applicant: Malcolm Kaye.

sq. ft.; and

WHEREAS, the applicant represents that the PCE will occupy all of the available square footage within the building; and

WHEREAS, the applicant states that the PCE will have facilities for weight training, exercise, fitness classes, massage, nutritional education and a retail shop selling fitness-related attire and foods; and

WHEREAS, the applicant states that all masseurs and masseuses employed by the facility are and will be New York State licensed; the applicant has submitted into the record the license for the one anticipated massage therapist; and

WHEREAS, the Board finds that the PCE, given the proposed uses and the hours of operation, will not have any significant impact on the adjacent residential uses; and

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

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

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

WHEREAS, the Board finds that, under the conditions and

---

# MINUTES

---

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. §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR. NO. 05-BSA-040K, dated December 21, 2004; and

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

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

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

THAT all signage shall comply with signage regulations applicable in C1 zoning districts;

THAT all exiting requirements and handicapped accessibility shall be as reviewed and approved by the Department of Buildings;

THAT a full sprinkler system shall be installed in the PCE and an interior fire alarm system consisting of area smoke detectors shall be installed throughout the PCE and pull stations shall be installed at all exits, as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, March 8, 2005.

---

## 355-03-BZ

APPLICANT - Agusta & Ross, for D'Angelo Properties, Inc., owner.

SUBJECT - Application September 27, 2004 - under Z.R. §72-21 to permit the proposed four story and penthouse mixed-use multiple dwelling, Use Groups 2 and 6, in a C2-2/R4 zoning district, which does not comply with the zoning requirements for residential floor

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§73-36 and 73-03, to permit, within an M1-1 zoning district, a proposed physical culture establishment on the first and second floors of an existing two-story commercial building; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 2, 2005"-(4) sheets; and on further condition:

THAT this grant shall be limited to a term of ten years from March 8, 2005, expiring March 8, 2015;

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

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

THAT the hours of operation shall be limited to: Monday through Friday 7 AM to 11 PM and Saturday and Sunday 7 AM to 10 PM;

area, building height, number of dwelling units and residential front yard, is contrary to Z.R. §23-141, §23-60, §35-20, §23-22 and §23-45.

PREMISES AFFECTED - 64-01/07 Grand Avenue, northeast corner of 64th Street, Block 2716, Lot 1, Borough of Queens.

## COMMUNITY BOARD #5Q

APPEARANCES - None.

**ACTION OF THE BOARD** - Laid over to April 19, 2005, at 1:30 P.M., for continued hearing.

---

## 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

APPEARANCES -

For Applicant: Joseph P. Morsellino and Thomas F. Gusamelli.

**ACTION OF THE BOARD** - Laid over to April 19, 2005, at 1:30 P.M., for continued hearing.

---

# MINUTES

---

**9-04-BZ**

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

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

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

**COMMUNITY BOARD #3BK**

APPEARANCES -

For Applicant: Peter Geis.

**THE VOTE TO REOPEN HEARING -**

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

**ACTION OF THE BOARD** - Laid over to May 10, 2005, at 1:30 P.M., for deferred decision.

**ACTION OF THE BOARD** - Laid over to March 29, 2005, at 1:30 P.M., for decision, hearing closed.

**144-04-BZ**

APPLICANT - Eric Palatnik, P.C., for Atlantic Realty Management, Inc., owner.

SUBJECT - Application March 30, 2004 - Under Z.R. §72-21, to permit the proposed development which will contain residential uses at the second through eighth floors (Use Group 2), within an M1-6 zoning district to vary Z.R. §43-10.

PREMISES AFFECTED - 286 Hudson Street, East side of Hudson Street between Dominick and Spring Streets, Block 579, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES -

For Applicant: Eric Palatnik and David Reck-CB#2.

**ACTION OF THE BOARD** - Laid over to April 19, 2005, at 1:30 P.M., for continued hearing.

**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 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**

APPEARANCES -

**72-04-BZ**

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

SUBJECT - Application March 5, 2004 - under Z.R. §11-411 to request an extension of term of the previously granted variance, which permitted the erection and maintenance of a gasoline service station with accessory uses, and Section 11-412 to authorize the alteration of the signage and the accessory use of a convenience store located in an R6/C1-2 and R6 zoning district.

PREMISES AFFECTED - 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES -

For Applicant: Janice Cahalane.

**THE VOTE TO CLOSE HEARING -**

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4**

**Negative:.....0**

For Applicant: Jay Segal.

For Opposition: Irene Palmese.

**ACTION OF THE BOARD** - Laid over to April 19, 2005, at 1:30 P.M., for continued hearing.

**258-04-BZ**

APPLICANT - Eric Palatnik, P.C., for Mindy Elmann, owner.

SUBJECT - Application November 16, 2004 - under Z.R. §73-622 to permit the proposed enlargement of a single family residence, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage and rear yard, is contrary to Z.R. §23-141(b) and §23-47.

PREMISES AFFECTED - 1837 and 1839 East 24th Street, south of Avenue "R", Block 6830, Lots 70 and 71 (tentative Lot 71), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES -

For Applicant: Eric Palatnik, Moshe Nachum and Mindy Elman.

**ACTION OF THE BOARD** - Laid over to March 29, 2005, at 1:30 P.M., for continued hearing.

**267-04-BZ**

APPLICANT - Fischbein Badillo Wagner Harding, for Kermit Square, LLC, owner.

SUBJECT - Application July 30, 2004 - under Z.R. §72-21, to permit the proposed thirty-two unit multiple dwelling, Use Group 2, located in a C8-2 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED - 362/64 Coney Island Avenue, northwest corner of Kermit Place, Block 5322, Lot 73, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

APPEARANCES -

For Applicant: Peter Geis.

For Opposition: Randy Perez, George Bissell, Nicholas Bedell, John

---

# MINUTES

---

Keefe, Jackie Bhatti, Jessica Dason, David Werner and Joan Dyner.

**ACTION OF THE BOARD** - Laid over to May 10, 2005, at 1:30 P.M., for continued hearing.

---

**339-04-BZ**

APPLICANT - Eric Palatnik, P.C., for Kramer & Wurtz, Inc, owner; Apache Oil Co., lessee.

SUBJECT - Application October 13, 2004 - under Z.R.§§11-411 & 11-412 to reinstate the previous BSA variance, under calendar number 205-29-BZ, for automotive service station located in an R3-1 zoning district. The application seeks an amendment to permit the installation of a new steel framed canopy over the existing fuel dispenser islands.

PREMISES AFFECTED - 157-30 Willets Point Boulevard, south side of the intersection formed by Willets Point Boulevard and Clintonville Street, Block 4860, Lot 15, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES -

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** - Laid over to April 12, 2005, at 1:30 P.M., for continued hearing.

---

*Pasquale Pacifico, Executive Director.*

Adjourned: 4:40 P.M.

---

# CORRECTIONS

---

**\*CORRECTION**

This resolution adopted on July 20, 2004, under Calendar No. 342-03-BZ and printed in Volume 89, Bulletin No. 31, is hereby corrected to read as follows:

**342-03-BZ**

**CEQR#04-BSA-074M**

**APPLICANT - Jay Segal (Greenberg Traurig) for Vincent Perazzo, owner; 92-94 Greene Street, LLC, contract vendee. SUBJECT - Application November 10, 2003 - under Z.R. §72-21 to permit the proposed seven-story building, that will have retail use in its cellar and first floor, and residential use on its upper six floors, Use Groups 2 and 6, located in an M1-5A zoning district, which is contrary to Z.R. §42-14D, §42-00, §42-10 and §43-12.**

**PREMISES AFFECTED - 92/94 Greene Street, aka 109 Mercer Street, 100' north of Spring Street, Block 499, Lot 1, Borough of Manhattan.**

**COMMUNITY BOARD #2M**

**APPEARANCES - None.**

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

**THE VOTE TO GRANT -**

**Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....4**

**Negative: Commissioner Miele.....1**

**THE RESOLUTION -**

**WHEREAS, the decision of the Borough Commissioner, dated October 22, 2003 acting on Application No. 103595174 reads, in pertinent part:**

- "1. Ground floor retail use not permitted in M1-5A zoning district for a building whose lot coverage exceeds 3,600 S.F. as per Z.R. 42-14D.**
- 2. Residential use is not permitted in New Building in M1-5A zoning as per Z.R. section 42-00, 42-10, and 42-14D.**
- 3. Bulk regulations not provided for residential building in M1-5A zoning district, BSA must provide. (as per Z.R. 43-12 for M1-5);" and**

**WHEREAS, a public hearing was held on this application on February 24, 2004 after due notice by publication in The City Record, with continued hearings on April 13, 2004, and June 9, 2004 and then to July 20, 2004 for decision; and**

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

**WHEREAS, Community Board 2, Manhattan, disapproved this application, and certain civic organizations and individuals opposed it, providing both oral testimony and written submissions in opposition; and**

**WHEREAS, Assembly Member Glick, State Senator Connor and Council Member Gerson opposed this application; and**

**WHEREAS, parties opposed to the subject application generally voiced concerns about the alleged negative impact the proposed waivers would have on the character of the neighborhood; specifically, concerns were raised about the compatibility of the proposed height and rear yard equivalent with built conditions, the impact of a single, large ground floor retail use, the obstruction of lot line windows, noise that could potentially result from the recreational use of the rear yard equivalent, and the location of eating and drinking establishments on the ground floor; and**

**WHEREAS, this is an application under Z.R. §72-21, to permit the construction of a seven-story, mixed-use commercial and residential building on a lot within a M1-5A zoning district, which does not comply with underlying district requirements concerning residential and ground floor retail use, contrary to Z.R. §§42-00, 42-10, and 42-14D; and**

**WHEREAS, the subject zoning lot is comprised of one tax lot (1) spanning the complete width of the block bounded on the north by Prince Street, on the east by Mercer Street, on the south by Spring Street, and on the west by Greene Street; and**

**WHEREAS, the lot is within the Cast Iron Historic District, and the proposed building has received a Certificate of Appropriateness ("C of A") from the Landmarks Preservation Commission ("LPC") on January 28, 2002; and**

**WHEREAS, as a condition of this grant, the applicant will obtain an updated C of A; and**

**WHEREAS, the site has a lot area of 7,500 square feet and is comprised of a 25' by 200' through lot, with frontage on both Greene and Mercer Streets, and an adjacent 25' by 100' interior lot, with frontage on Greene Street, and is currently used as a public parking lot; and**

**WHEREAS, the proposed development contemplates the construction of a seven-story building, with retail use on the ground floor and six residential floors, with 15 residential units and no balconies; and**

**WHEREAS, the second through fifth floors of residential use will also contain mezzanines; and**

**WHEREAS, the proposed building will have a rear yard equivalent of 55 feet for the through lot portion of the site (and a rear yard of 28 feet for the interior lot portion); and**

**WHEREAS, a 22 foot setback at the 6th and 7th floors will be provided, pursuant to the current C of A; and**

**WHEREAS, the proposal contemplates approximately 4,800 square feet of retail floor area on the ground floor (as well as cellar level retail space, which does not count as floor area), which is proposed to be divided into three separate commercial spaces, and which will not be occupied by an eating and drinking establishment; and**

**WHEREAS, the building will be constructed in two**

sections, one with frontage on Greene Street and one with frontage on Mercer Street; and

**WHEREAS**, the ground floor and cellar retail space will cover the entire site; and

---

# CORRECTIONS

---

WHEREAS, the proposed building will have a floor area ratio ("FAR") of 5.0, and will provide a 55 feet rear yard equivalent between the two building sections; and

WHEREAS, the above specifications reflect a decrease in the applicant's original proposal; specifically, the applicant initially proposed a building with a 6.13 FAR, a 40 feet rear yard equivalent, and 18 units with balconies; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site in conformance with the applicable use provisions of the Zoning Resolution: (1) the site's long, narrow shape, which leads to significant increased construction costs as opposed to a regularly shaped property; and (2) the fact that the site is one of the few narrow vacant through lots in the vicinity, and does not possess the benefit of three frontages, which would lower construction costs; and

WHEREAS, opposition to the application claims that the shape of the lot is not unusual and does not cause increased construction costs; and

WHEREAS, the applicant has provided supplementary evidence of the specific dollar amount of increased construction costs associated with the lot's shape; and

WHEREAS, the Board has reviewed this supplementary evidence and finds it sufficient and credible; and

WHEREAS, the Board also finds that the subject lot is one of the few vacant, narrow through lots in the vicinity, and that it is relatively small; and

WHEREAS, therefore, 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 with the current applicable zoning regulations; and

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

WHEREAS, specifically, the economic analysis evaluated a conforming commercial use and determined that such use would not realize a reasonable return; and

WHEREAS, the Board asked the applicant to explain why a 5.0 FAR proposal that includes a 60 feet rear yard equivalent would not be feasible; and

WHEREAS, in response, the applicant has submitted a letter from its financial expert stating that his analysis does not show a return from 5.0 FAR building with a 55 feet rear yard equivalent, because there would be a loss of floor area at every level of the building which would have to be relocated to the mezzanines, resulting in less overall profit; and

WHEREAS, the Board finds that the FAR relocation analysis of the applicant's financial expert is directly related to the narrowness of the lot frontages and resulting floor plate sizes for both buildings; and

WHEREAS, the applicant, in response to opposition concerns about the financial expert's conclusion regarding a

loss of floor area at every level, submitted a breakdown of the square footage that would be lost; and

WHEREAS, the applicant's financial expert has also previously submitted a letter stating that neither a 5.0 FAR, 60' rear yard equivalent, 15 unit scheme nor a 5.0 FAR, 40 feet rear yard equivalent, 12 unit scheme would realize a reasonable return; and

WHEREAS, opposition claims that the comparable sales used by the applicant in its economic analysis understated the market, and also challenges the construction cost estimates in the analysis; and

WHEREAS, the applicant has provided a response to these claims that the Board finds sufficient and credible; and

WHEREAS, the Board finds that because the site is a through lot, underpinning and shoring costs are increased; and

WHEREAS, the Board finds that because the lot is small, the floor plates that would be created could not sustain a viable conforming development; and

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

WHEREAS, the applicant represents that the proposed mixed-use residential building will not alter the essential character of the neighborhood because: (1) LPC has determined that the proposed building would be appropriate given the context of the street, (2) the sixth and seventh stories of the proposed building would not be visible from Greene or Mercer Streets, (3) the proposed building height is similar to neighboring buildings, (4) the proposed residential units have an average size of 2000 square feet and a minimum unit size of 1200 square feet, (5) no eating and drinking establishments will be located on the first floor or in the cellar, and (6) the rear yard and rear yard equivalents of the proposed building are similar to, or greater than, neighboring lots; and

WHEREAS, opposition claims that the proposed rear yard equivalent, because it falls short of 60 feet, blocks a total of eleven windows and one skylight on adjoining property, and has submitted photographs that purport to support this claim; and

WHEREAS, the applicant states that none of the windows shown in the photographs would be blocked; and

WHEREAS, additionally, opposition raises the following concerns: (1) the possibility of location of one large superstore on the ground floor, (2) the use of the rooftops of the commercial spaces for recreational purposes, (3) the installation of windows facing the lot line that would provide greater privacy for Spring Street residences, through the use of opaque or translucent glass, and (4) a reduction in building height to reduce the effect of shadows on facing residences; and

WHEREAS, the applicant responded by noting that: (1) the maximum square feet available for a single retail

**establishment would be approximately 5,000 square feet, and a superstore is typically greater than 10,000 square feet, (2)**

---

# CORRECTIONS

---

the use of rear yards for recreational purposes is not prohibited in New York City, and the residential occupants of the proposed building should not be treated differently, (3) restrictions on the type of windows is not required by statute and restrictions on the amount of light entering the proposed residential units should not be imposed by the Board, and (4) any reduction in the building height would result in a significant reduction in the value of the affected units; and

WHEREAS, the Board, through its site visit and a review of the submitted land use maps, observes that the proposed building will provide a greater rear yard equivalent than the majority of the buildings on the same block, and that the block also has four six-story buildings, an 8-story building, a 12-story building, and a 14-story building; and

WHEREAS, the Board also observes that the block directly to the east also contains buildings of a greater height than the proposed building; and

WHEREAS, therefore, the Board finds that the neither the building's proposed height nor the 55 feet rear yard equivalent are incompatible with the built conditions in the surrounding neighborhood; and

WHEREAS, the Board also finds that the proposed residential and retail use of the site is appropriate, given that such uses are prevalent in the neighborhood, and that the minimum unit size is typical of the loft dwellings that characterize the neighborhood; and

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

WHEREAS, as noted above, the Board finds that the applicant made significant changes to the proposed building, having reduced the FAR to 5.0 and increasing the rear yard equivalent to 55 feet; and

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

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

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

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

Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the construction of a seven-story, mixed-use commercial and residential building on a lot within a M1-5A zoning district which does not comply with underlying district requirements concerning retail and residential use and is contrary to Z.R. §§ 42-00, 42-10, and 42-14D; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 22, 2004" - (6) sheets and "Received July 6, 2004" - (4) sheets; on further condition:

THAT the retail spaces shall be limited to Use Group 6, except that there shall be no eating and drinking establishment located on the ground floor or cellar of the building;

THAT there shall be no single retail establishment occupying more than 10,000 square feet of gross floor area on the ground floor and cellar level;

THAT the open space in the rear yard at the second floor level shall not be common space for the use of all occupants, but instead is restricted to use by those occupants residing on the second floor;

THAT there shall no balconies in the rear yard;

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

THAT the applicant will obtain an updated Certificate of Appropriateness from the Landmarks Preservation Commission prior to any building permit being issued by the Department of Buildings;

THAT all mechanical deductions as shown on the plans shall as approved by the Department of Buildings;

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

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

THAT interior partitions and layouts as shown on the approved plans for the ground floor, to be occupied by retail space, may be changed without approval of the Board provided that the floor area is not increased;

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

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

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

Adopted by the Board of Standards and Appeals, July 20, 2004.

\*The resolution has been corrected in the part which read: "Application No.;" now reads: "Application No.". Corrected in Bulletin No. 12, Vol. 90, dated March 17, 2005.

---

*Pasquale Pacifico, Executive Director.*