
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DIRECTORY

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350-04-BZ 3450 Wayne Avenue, The Bronx

DOCKETS

New Case Filed Up to March 29, 2005

52-05-BZ B.BK. 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn. N.B.#301757061. Proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

COMMUNITY BOARD #10BK

53-05-A B.Q. 62-41 Forest Avenue, east side, 216' south of Metropolitan Avenue, Block 3492, Lots 25, 28, 55 and 58(Tentative Lot 25), Borough of Queens. N.B.#402039487. Proposed construction of a three and four story residential and commercial building, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

54-05-A B.BK. 1824 53rd Street, southeast corner of 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn. Applic.#300131122. Application to revoke Certificate of Occupancy No. 300131122, on the basis that the Certificate of Occupancy allows conditions at the subject premises that are contrary to the Zoning Resolution and the Administrative Code.

55-05-A B.Q. 40 Ocean Avenue, west side, 295.32' north of Rockaway Boulevard, Block 16350, Lot 300, Borough of Queens. N.B.#402074027. Proposed enlargement to an existing one family dwelling not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

56-05-A B.Q. 10 Janet Lane, south side, 235.6' west of Beach 201st Street, Block 16350, Lot 400, Borough of Queens. N.B.#402074036. Proposed enlargement to an existing one family dwelling not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

57-05-A B.Q. 667 Highland Place, east side, .10' north of 12th Avenue,, Block 16350, Lot 300, Borough of Queens. N.B.#402059179. Proposed enlargement to an existing one family dwelling not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

58-05-A B.Q. 15 Ocean Avenue, east side, 295.32' north of Rockaway Point Boulevard, Block 16350, Lot 300, Borough of Queens. N.B.#402074018. Proposed enlargement to an existing one family dwelling not fronting on a legally mapped

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

59-05-A B.Q. 5 Courtenay Lane, north side, 237.31' east of Beach 203rd Street, Block 16350, Lot 400, Borough of Queens. N.B.#402059160. Proposed enlargement to an existing one family dwelling not fronting on a legally mapped street, also a proposal to upgrade the private disposal in the bed of an existing service road, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings' Policy.

60-05-BZ B.BK. 1024 Lancaster Avenue, between East 12th Street and Coney Island Avenue, Block 7394, Lot 50, Borough of Brooklyn. Applic.#301898098. Proposed enlargement of an existing single family residence, Use Group 1, located in an R4 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, lot coverage and rear yard, is contrary to Z.R. §23-141(b) and §23-47.

COMMUNITY BOARD #15BK

61-05-A B.BK. 35 McDonald Avenue, aka 25/47 McDonald Avenue, east side, between 20th Street and Terrace Place, Block 895, Lot 1, Borough of Brooklyn. Applic.#301604299. Proposed erection of a four-story residential building, located partially within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

62-05-BZ B.BK. 597 Gates Avenue, north side, 242.00' west of Throop Avenue, Block 1810, Lot 59, Borough of Brooklyn. Applic.#301425615. Proposed off-street parking facility, located within 600 feet, accessory to an existing community facility use located at 470 Throop Avenue, situated in an R6 zoning district, is contrary to Z.R. §23-53.

COMMUNITY BOARD #3BK

DOCKETS

63-05-BZ B.BK. 2324 West 13th Street, between Avenues "W and "X", 150' south of Avenue "W", Block 7160, Lot 15, Borough of Brooklyn. Alt.#301900833. Proposed two story addition, to an existing community facility, located in an R5 within an R5/C1-2 zoning district, which does not comply with the zoning requirements for front yard, maximum street wall height and lot coverage, is contrary to Z.R.§24-11, §24-34 and §77-28.

COMMUNITY BOARD #13BK

64-05-BZ B.S.I. 40 Conyngham Avenue, west side, between Springhill and Castleton Avenues, Block 101, Lot 445, Borough of Staten Island. Applic.#500753749. Proposed construction of a one family dwelling, Use Group 1, located in an R1-2 zoning district, which does not comply with the zoning requirements, for lot width, lot area and side yard, is contrary to Z.R. §23-32 and §23-461.

COMMUNITY BOARD #1SI

65-05-BZ B.BX. 269/75 East Burnside Avenue, north side, between Ryer and Anthony Avenues, Block 3156, Lot 85, Borough of The Bronx. Applic.#200929200.

The legalization of an automotive service station without the sale of gasoline, is contrary to a previous variance granted by the Board under Cal. No. 931-86-BZ, which permitted a gasoline service station with accessory automotive repairs in a C1-4/R8 zoning district.

COMMUNITY BOARD #5BX

66-05-BZ B.BX. 1236 Prospect Avenue, southeast corner of Home Street, Block 2693, Lot 29, Borough of The Bronx. Applic.#200929193. The legalization of an automotive service station without the sale of gasoline, is contrary to a previous variance granted by the Board under Cal. No. 176-35-BZ, which permitted a gasoline service station with accessory automotive repairs in a C2-4/R7-1 zoning district.

COMMUNITY BOARD #2BX

67-05-BZ B.M. 1710 Broadway, northeast corner of West 54th Street, Block 1026, Lot 21, Borough of Manhattan. Applic.#104053612. Proposed physical culture establishment, within the cellar level, with entry on the ground level, of an existing six-story building, located in a C6-6/C6-7 zoning district, requires a special permit from the Board as per Z.R. §73-36.

COMMUNITY BOARD #5M

68-05-BZ B.BK. 4911 17TH Avenue, east side, between 49th and 50th Streets, Block 5455, Lot 5, Borough of Brooklyn.

Alt.#301108450. Proposed enlargement of a three story plus attic building, currently housing a synagogue, with accessory residential on the second, third, and attic floors, which does comply with the zoning requirements for floor area ratio, side and front yards, is contrary to Z.R. §24-11, §24-162, §24-35, §24-34 and §23-141.

COMMUNITY BOARD #12BK

69-05-BZ B.BK. 1557 East 27th Street, 527.8' north of Avenue "P", Block 7688, Lot 19, Borough of Brooklyn. Applic.#301918628. 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 ratio, open space, lot coverage and rear yard, is contrary to Z.R. §23-141(b) and §23-47.

COMMUNITY BOARD #15BK

70-05-BZ B.BK. 2905 Avenue "M", north side, 25' east of East 29th Street, Block 7647, Lot 8, Borough of Brooklyn. Applic.#301911634. Proposed enlargement of an existing one family dwelling, Use Group 1, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side yards, is contrary to Z.R. §23-141 (a) and §23-461(a).

COMMUNITY BOARD #14BK

71-05-BZ B.BK. 1226 East 29th Street, west side, between Avenues "L and M", Block 7646, Lot 56, Borough of Brooklyn. Applic.#301889767. Proposed enlargement of an existing one family dwelling, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side and rear yards, is contrary to Z.R. §23-141, §23-46 and §23-47

COMMUNITY BOARD #14BK

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

APRIL 19, 2005, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 19, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEALS CALENDAR

22-05-A

APPLICANT - Dennis Dell'Angelo, President for Pleasant Plains, Richmond Valley, Civic Association for Joseph Galante, owner.

SUBJECT - Application February 7, 2005 - An appeal challenging the Department of Buildings' ("DOB") decision that approved and permitted the building of two (2) houses on a lot containing less than the required square footage as zoned for in the Special South Richmond District ("SSRD"), also this appeal is seeking to reverse the DOB' decision not to enforce §107-42 of the SSRD within NYC Zoning Resolution.

PREMISES AFFECTED - 5728 Amboy Road and 3 Haynes Street, southeast corner, Block 6654, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #3S.I.

PREMISES AFFECTED - 252/60 Atlantic Avenue (a/k/a 83/87 Boerum Place; 239/47 Pacific Street), east side of Boerum Place, between Atlantic Avenue and Pacific Street, Block 181, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

272-04-BZ

APPLICANT - Sullivan Chester & Gardner, for Chickie, LLC, owner.

SUBJECT - Application August 5, 2004 - under Z.R.§72-21 to permit the proposed five story, twenty- unit multiple dwelling, Use Group 2, located in an R-5 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, density, side and front yards, height and/or setback and parking spaces, is contrary to Z.R.§23-141, §23-22, §23-45a, §23-461(a and b), §23-462, §23-631d and §25-23.

PREMISES AFFECTED - 14-38/40 31st Drive, East side, between 14th and 21st Streets, Block 531, Lots 50 and 51, Borough of Queens.

COMMUNITY BOARD #1Q

APRIL 19, 2005, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, April 19, 2005, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

257-04-BZ

APPLICANT - Patrick W. Jones, Petraro & Jones, LLP, for Boerum Place, LLC, owner.

SUBJECT - Application November 19, 2004 - under Z.R.§72-21, to permit the proposed construction of an eight story mixed-use, retail-residential building, located in an R6A, R6, C2-4 and C2-3 zoning districts which does not comply with the zoning requirements for floor area ratio, lot coverage, building height and loading berth, is contrary to Z.R. §23-145, §33-121, §23-633, §35-25 and §36-22.

SUBJECT - Application September 7, 2004 - under Z.R.§72-21 - Proposed construction of a one-story retail building, Use Group 6, located in an R3-2 zoning district, is contrary to Z.R. §22-11.

PREMISES AFFECTED - 111-02 Sutphin Boulevard, (a/k/a 111-04/12 Sutphin Boulevard), southeast corner of 111th Avenue, Block 11965, Lots 26, 188 and 189 (tentative 26), Borough of Queens.

COMMUNITY BOARD #12Q

292-04-BZ

APPLICANT - Eric Palatnik, P.C., for Daniel Hirsch, owner.

SUBJECT - Application August 23, 2004- under Z.R.§73-622 to permit the proposed enlargement of an existing single family residence, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, rear and side yards, is contrary to Z.R. 23-141(a), §23-47 and §23-48.

PREMISES AFFECTED - 1340 East 26th Street, between Avenues "M and N", Block 7661, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #14BK

299-04-BZ

APPLICANT - Patrick W. Jones, Petraro & Jones, LLP, for Sutphin Boulevard, owner.

391-04-BZ

APPLICANT - Moshe M. Friedman, P.E., for Meilech Fastag, owner.

CALENDAR

SUBJECT - Application December 13, 2004 - under Z.R. §73-622 Proposed enlargement to an existing one family dwelling, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio and open space ratio, is contrary to Z.R. §23-141(a).

PREMISES AFFECTED - 2610 Avenue "L", south side, 60' east of the intersection of Avenue "L" and East 26th Street, Block 7644, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Pasquale Pacifico, Executive Director

APRIL 20, 2005, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 20, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

DISMISSAL CALENDAR

45-65-BZ

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: John Catsimatidis c/o Red Apple Group.

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 1526 Grand Concourse aka 1539 Sheridan Avenue, Sheridan Avenue between East 172nd Street and Mount Eden Parkway, Block 2821, Lot 11, Borough of The Bronx.

COMMUNITY BOARD #4BX

154-04-BZ

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: Wavebrook Associates.

245-04-BZ

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: Mark Stern

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 102-104 Franklin Avenue, westerly side of Franklin Avenue, 182' south of Park Avenue, Block 1898, Lots 45 & 46, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APRIL 20, 2005, 10:00 A.M.

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 63 Rapeleye Street, north side of Rapeleye Street, 116' east of Hamilton Avenue, Block 363, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

160-04-BZ/161-04-A

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: Daffna, LLC.

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 77 Washington Avenue, easterly side of Washington Avenue, 170' north of Park Avenue, Block 1875, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

194-04-BZ

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: Always Ready Corp.

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 9029 Krier Place, aka 900 E. 92nd Street, 142' west of 92nd Street, Block 8124, Lot 75 (ten.180), Borough of Brooklyn.

COMMUNITY BOARD #18BK

239-04-BZ

APPLICANT - New York City Board of Standards and Appeals.
OWNER OF PREMISES: 341 Scholes Street, LLC.

SUBJECT - to dismiss the application for lack of prosecution.

PREMISES AFFECTED - 225 Starr Street, northerly side of Starr Street, 304' east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

COMMUNITY BOARD #4BK

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 20, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

146-03-BZ/139-02-A

APPLICANT - Jesse Masyr, Wachtel & Masyr, LLP, for 1511

CALENDAR

Third Avenue Assoc., owner.

SUBJECT - Application January 19, 2005 - request for a rehearing to permit the filing of a new special permit application pursuant to Z.R.§73-36 to legalize the operation of a physical culture establishment based on substantial new evidence and material changes in the proposed plans. Based on the new evidence, this application requests that the Board permit the filing of a modification to a condition in a previously decided Appeals case under Cal. No. 139-02-A.

PREMISES AFFECTED - 1511 Third Avenue, aka 201 East 85th Street, southwest corner bounded by Second and Third Avenues and East 85th & 86th Streets, Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

Pasquale Pacifico, Executive Director

**REGULAR MEETING
TUESDAY MORNING, MARCH 29, 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, January 25, 2005 and January 26, 2005, were approved as printed in the Bulletin of February 3, 2005, Volume 90, Nos. 4-5.

SPECIAL ORDER CALENDAR

300-73-BZ

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

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

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

COMMUNITY BOARD #9Q

APPEARANCES -

For Applicant: Adam Rothkrug.

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 re-opening and an amendment to the resolution; and

WHEREAS, a public hearing was held on this application on January 25, 2005, after due notice by publication in the City Record, laid over to March 1, 2005 and then to March 29, 2005 for decision; and

WHEREAS, Community Board No. 9, Queens recommends approval of the subject application; and

WHEREAS, on May 17, 1973, under the subject calendar number, the Board granted an application under Z.R. § 72-21, to permit, in an R5 zoning district, the construction of a one-story enlargement to an existing commercial vehicle storage establishment for a term of ten years, contrary to Z.R. §§22-00, 52-22, 52-41 and 23-142; and

WHEREAS, at various times since 1967, under the same calendar number, the Board has reopened the application to allow for other site modifications and extensions of term, the last being granted on February 7, 1995; and

WHEREAS, the most recent term of the variance expired on May 14, 2004; and

WHEREAS, the applicant now seeks an extension of term of the variance and an amendment to permit the use of a portion of the premises for minor mechanical repairs; and

WHEREAS, the applicant states that the proposed accessory repair use will take place within the easterly portion of the existing structure, which is completely enclosed and fully accessible with its own overhead door for egress/ingress; and

WHEREAS, the applicant further states that: (1) the proposed repair use will be relatively minor in nature and will be performed exclusively upon the vehicles of the fuel oil company at the premises, which are already stored there and (2) no body and fender repairs will be performed on the premises, so the proposed repair use will not interfere with the use and enjoyment of any surrounding property; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of an extension of term and the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit a APPLICANT - Kenneth H. Koons, Architect, for Pauline O'Sullivan, owner.

SUBJECT -Application November 23, 2004 - Reopening for an extension of term of variance for an eating and drinking establishment, without restrictions on entertainment and dancing, Use Group 12, located in a C2-3 within an R6 zoning district.

PREMISES AFFECTED - 202 West 236th Street, a/k/a 5757 Broadway, southwest corner of Broadway and West 236th Street, Block 5760, Lot 150, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES -

For Applicant: Kenneth H. Koons.

ACTION OF THE BOARD - Application granted on condition.

THE VOTE TO GRANT -

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

an extension of term of the variance for an additional ten (10) years from the date of this resolution to expire on March 28, 2015 and an amendment to permit use of a portion of the premises for minor mechanical repairs; on condition that all work shall substantially conform to drawings as filed with this application, marked 'Received March 2, 2005' - (1) sheet and 'Received March 15, 2005'-(1) sheet; 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 repair facility's hours of operation shall be 7:00 am to 7:00 pm, Monday to Saturday;

THAT the minor mechanical repairs on the premises are limited to general vehicle maintenance including tune-ups, brake service, oil and other fluid, filter and gasket changes;.

THAT the use of an acetylene torch and paint spraying is not permitted on the premises;

THAT no automotive repair will be conducted in the open yard of the site;

THAT the open yard will be kept free of debris;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Permit No.401730935)

Adopted by the Board of Standards and Appeals, March 29, 2005.

121-93-BZ

Negative:.....0

THE RESOLUTION-

WHEREAS, this is an application for a re-opening and an extension of the term of a variance previously granted by the Board; 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 29, 2005; and

WHEREAS, Community Board No. 8, Bronx, recommends approval of the subject application; and

WHEREAS, the premises is within a C2-3 (R6) zoning district, is located on the southwest corner of Broadway and West 236th Street, and is currently improved upon with a four-story plus cellar building, with an eating and drinking

establishment without restrictions on entertaining or dancing (Use Group 12) and stores on the ground floor, and residential units on the second and third floors; and

WHEREAS, on February 14, 1989, under BSA Calendar No. 702-87-BZ, the Board granted a special permit under Z.R. §73-241, legalizing the existing eating and drinking establishment at the premises; and

WHEREAS, this special permit subsequently lapsed, though the eating and drinking establishment remained in active operation at the site; and

WHEREAS, on June 6, 1995, under the subject calendar number, the Board granted a variance under Z.R. § 72-21, legalizing the eating and drinking establishment use, and waiving certain bulk regulations related to a proposed expansion of the establishment; and

WHEREAS, on January 7, 1997, under the subject calendar number, the Board granted an amendment to the approved plans; specifically, the proposed enlargement of the eating and drinking establishment was abandoned, and therefore omitted from the plans; and

WHEREAS, the applicant now seeks an extension of the term of the use variance for ten years; and

WHEREAS, the Board has determined that the evidence in the record supports the grant of the requested extension of term.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to extend the term of a variance for an eating and drinking establishment without restrictions on entertainment or dancing (UG 12), previously granted by the Board, for a term of ten years; on condition that this use shall substantially conform to drawings for the ground floor and cellar of the building filed with this application marked 'Received March 10, 2005' - (2) sheets; and on further condition:

THAT the term of this variance shall be limited to ten years, to expire on June 6, 2015;

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

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy if listed previously;

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

WHEREAS, a public hearing was held on this application on March 8, 2005 after due notice by publication in the City Record, and then to decision on March 29, 2005; and

WHEREAS, on September 15, 1998, the Board granted a variance application under the subject calendar number to permit the erection of a nine-story plus penthouse building, with retail uses on the ground floor (Use Groups 2 and 6), located in a C2-8/R8B (TA) zoning district, with non-compliances as to height, setback, rear yard, minimum distance between legally required windows and side yard, contrary to Z.R. §§ 23-47, 23-692, 33-492 and 23-861; and

WHEREAS, the period in which to complete construction expired on September 15, 2002; and

WHEREAS, the applicant states that the reason for the requested extension of time is due to financial considerations; and

WHEREAS, therefore, the Board has determined that the

THAT all plans for the second and third floors previously stamped by the Board in relation to its January 7, 1997 grant remain in effect;

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

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

(DOB Application No. 200918230)

Adopted by the Board of Standards and Appeals, March 29, 2005.

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

COMMUNITY BOARD#8M

APPEARANCES -

For Applicant: James P. Power.

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 waiver of the Rules of Practice and Procedure and an extension of time to complete construction of, and obtain a certificate of occupancy for, a nine-story plus penthouse residential building previously approved by the Board; and

evidence in record supports the grant of the requested waiver and extension.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, said resolution having been adopted on May 2, 2000, so that as amended this portion of the resolution shall read: "to permit an extension of the time to complete construction of a nine-story plus penthouse building, with retail uses on the ground floor and to obtain a certificate of occupancy, for an additional four years from the date of this resolution to expire on March 28, 2009; on condition:

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

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

jurisdiction objection(s) only; and

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

(DOB Application No. 101709126)

Adopted by the Board of Standards and Appeals, March 29, 2005.

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: Trevis Savage and Eric Palatnik.

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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a Certificate of Occupancy ("CO") for a community facility; and

WHEREAS, a public hearing was held on this application on March 8, 2005, after due notice by publication in The City Record, and then to decision on March 28, 2005; and

WHEREAS, on October 8, 2002, the Board granted an application under the subject calendar number, to permit, in an R3-1 zoning district, the proposed enlargement of an existing two-story Community Facility (Use Group 3); and WHEREAS, the period in which to obtain the CO expired on October 8, 2004; and

WHEREAS, the applicant represents that a new CO could not
THE RESOLUTION -

WHEREAS, this is an application for a re-opening and an amendment to the resolution; 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 29, 2005; and

WHEREAS, Community Board No. 2, Manhattan, recommends approval of the subject application; said conditions are reflected below; and

WHEREAS, on April 27, 2004, under the subject calendar number, the Board granted an application under Z.R. § 72-21, to permit the proposed erection of a 120' high, 10-story mixed use building (Use Groups 2 and 6) consisting of residential apartments and local retail usage, located in an M1-5B zoning district, which is contrary to Z.R. § 42-10; and

WHEREAS, the applicant now seeks an amendment to the resolution to permit the replacement of the previously approved first

be obtained due to unexpected delays in making the required filings at the New York City Department of Buildings.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, said resolution having been adopted on October 8, 2002, so that as amended this portion of the resolution shall read: "to permit an extension of the time to obtain a Certificate of Occupancy for an additional two years from the date of this resolution to expire on March 29, 2007; on condition:

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

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

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

(DOB No. 401600736)

Adopted by the Board of Standards and Appeals, March 29, 2005.

69-03-BZ

APPLICANT - Friedman & Gotbaum, LLP, by Shelly Friedman, Esq., for 40 Bond Street Partners, LLC, owner.

SUBJECT - Application December 20, 2004 - reopening for an amendment to the resolution to modify the variance for a use conversion from manufacturing to residential that was originally granted on April 27, 2004.

PREMISES AFFECTED - 32-40 Bond Street, 163' east of the corner formed by the intersection of Bond and Lafayette Streets, Block 530, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Lori Cuisinier.

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

floor retail use with residential townhouse use and the cellar level with accessory residential uses, a modified rear yard, a minor re-allocation of residential square footage at the rooftop level and minor modifications to the previously approved mechanical system located at such level; and

WHEREAS, the applicant specifically proposes: (1) to abandon the CPC special permit approving retail (and/or hotel use) on the ground floor, cellar, and sub-cellar of the premises; (2) to build five residential duplex units on the first and second floors as opposed to the construction set forth in the approved plans, which indicate 6,415 square feet of retail on the first floor and seven residential units on the second floor; and (3) to redistribute a small amount (936 square feet) of residential floor area to the penthouse; and

WHEREAS, the applicant states that the proposed plans do not increase the FAR, because the small amount of residential space added is offset by the reduced square footage of the

now-recessed 1st and 2nd floors as depicted in the revised plans; and

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

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit the replacement of the previously approved first floor retail use with residential townhouse use and the cellar level with accessory residential uses, a modified rear yard, a minor re-allocation of residential square footage at the rooftop level and minor modifications to the previously approved mechanical system located at such level; on condition that all work shall substantially conform to drawings as filed with this application, marked 'Received March 16, 2005'- (13) sheet; and on further condition:

THAT all use of the rear yard is to be reviewed and approved by the Department of Buildings;

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

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

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

(DOB Permit No. 103340396)

Adopted by the Board of Standards and Appeals, March 29, 2005.

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

APPEARANCES -

For Applicant: Stephen Ely.

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 Physical 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

APPEARANCES -

For Applicant: Janice Cahalane.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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

100-71-BZ

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

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

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

COMMUNITY BOARD #1Q

APPEARANCES -

For Applicant: Adam Rothkrug.

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

189-96-BZ

APPLICANT - John C Chen, for Ping Yee, owner; Edith D'Angelo-Cnandongga, 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

APPEARANCES -

For Applicant: John Chen and John Feisco, Esq..

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

28-02-BZ

Commissioner Miele and Commissioner Chin.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 19, 2005, at 10 A.M., for decision, hearing closed.

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

APPEARANCES -

For Applicant: Howard Hornstein and Peter Geis.

For Opposition: Stuart Klein and Gina Nanni O'Brien

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

APPEALS CALENDAR

271-04-A

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

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

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

APPEARANCES -

For Opposition: Janine A. Gaylard, Department of Buildings.

ACTION OF THE BOARD -Application dismissed.

THE VOTE TO GRANT -

Affirmative:0

Negative Chair Srinivasan, Commissioner Miele and Commissioner Chin.....3

Not Voting: Vice-Chair Babbar1

THE RESOLUTION -

WHEREAS, the instant appeal comes before the Board in response to a final determination, set forth in Criminal Court summons No. 406908328, dated July 2, 2004 ("2004 Summons") issued by the New York City Department of Buildings ("DOB"), that charges Pier 63, Maritime, Inc. ("appellant") with, among other things, the failure to obtain a Place of Assembly Permit and Certificate of Occupancy for the barge permanently moored at Pier 63 ("Barge"); and

WHEREAS, this appeal challenges DOB's jurisdiction to issue the summons to the appellant; and

WHEREAS a public hearing was held on this application on December 14, 2004 after due notice by publication in The City Record, with continued hearings on February 8, 2005 and March 8, 2005, and then to decision on March 29, 2005; and

WHEREAS, both DOB and the appellant were represented by

WHEREAS, appellant now challenges DOB's jurisdiction to issue the 2004 Summons and to require appellant to obtain a place of assembly permit or a certificate of occupancy for the premises; and

WHEREAS, DOB's primary assertion is that the doctrine of collateral estoppel precludes the Board's consideration of appellant's challenge of DOB's jurisdiction in this matter; and

WHEREAS, specifically, DOB states that the Board should not decide the issue of whether DOB has jurisdiction over the appellant because this issue was necessarily decided in the Criminal Court Decision; and

WHEREAS, DOB further maintains that the doctrine of collateral estoppel applies to criminal court decisions in subsequent administrative venues, and has submitted case law regarding the same; and

WHEREAS, the Board agrees with DOB that the following are

counsel in this appeal; and

WHEREAS, the premises consists of a barge permanently moored at Pier 63 in the Hudson River at West 23rd Street; the barge is approximately 320 ft. by 40 ft.; and

WHEREAS, an old lightship vessel, known as the Frying Pan, is also permanently moored at Pier 63, and is a subtenant of the appellant; and

WHEREAS, previously, on July 26, 2002, a DOB inspector inspected the premises and issued Notice of Violation No. 072602CMTF01RNS and Criminal Court summons No. 406907366-8 ("2002 Summons"), for, among other things, operating a cabaret and eating/drinking establishment without a place of assembly permit or approved place of assembly plan; and

WHEREAS, on November 14, 2002, the appellant moved in Criminal Court to dismiss the 2002 Summons on various jurisdictional grounds; and

WHEREAS, appellant states that one of the grounds upon which it filed its motion to dismiss in the Criminal Court proceeding was that DOB lacked jurisdiction to enforce violations against the premises as it is situated on waterfront property and engaged in activities in furtherance of waterfront navigation; and

WHEREAS, by decision and order dated March 11, 2003 (the "Criminal Court Decision"), Hon. Martin P. Murphy, Judge of the Criminal Court, denied appellant's motion and held "that the City of New York has jurisdiction over the Barge and the Frying Pan, to enforce the Building Code as well as the Fire Prevention Code"; and

WHEREAS, on July 2, 2004, DOB again inspected the premises and issued NOV No. 070204CNTF02RNS and the 2004 Summons; and

WHEREAS, the appellant notes that at the same time that DOB served the 2004 Summons, DOB also served upon the appellant a Notice of Violation and Hearing before the Environmental Control Board ("ECB"), under Violation No. 34400007R, again charging appellant with operating a permanently moored barge as a place of assembly without a place of assembly permit; and

WHEREAS, the ECB issued a Decision and Order on October 18, 2004 dismissing the violation against the appellant; and

WHEREAS, the ECB Administrative Law Judge stated in her decision that DOB lacked jurisdiction to issue the subject violation; and

the elements necessary to invoke the doctrine of collateral estoppel: (1) the issue raised in the instant proceeding is identical to that decided in a prior proceeding; (2) the issue was necessarily decided in the prior proceeding; and (3) the appellant had a full and fair opportunity to litigate the issue in the prior proceeding; and

WHEREAS, as per the first element of collateral estoppel, DOB argues that the issue raised in this appeal and in the Criminal Court proceeding are identical since: (1) both involve the issuance of a violation and summons by a DOB inspector for operation of the premises as a place of assembly without a place of assembly permit; (2) both violations and summonses name the appellant as defendant; and (3) in both proceedings, the question of whether DOB has jurisdiction over the appellant is tantamount; and

WHEREAS, the appellant argues that because the violations at issue in the Criminal Court Decision were not for failure to

possess a certificate of occupancy for the premises, whereas the 2004 NOV does cite such a violation, the two proceedings are not identical; and

WHEREAS, however, the issuance of additional code violations by DOB does not render each subsequent violation a new issue to be re-litigated because the issue that is essential to both challenges by the appellant relates to whether DOB has jurisdiction to enforce the Building Code over the premises and not what types of violations DOB issues; and

WHEREAS, the appellant further argues that the issue raised in this proceeding is not identical to that raised in the prior proceeding because the Criminal Court Decision applied to both the Frying Pan and the Barge, and this proceeding only applies to the Barge; and

WHEREAS, however, the Criminal Court's consideration of the Frying Pan in addition to the Barge in the prior proceeding in no way negates or modifies its holding that the City has jurisdiction over the Barge; and

WHEREAS, appellant also argues that the issue in this proceeding is not identical to the Criminal Court proceeding because the judge in that proceeding decided whether New York City or New York State had jurisdiction over the Barge, and in this proceeding the Board is being asked to analyze whether DOB has jurisdiction over the Barge; and

WHEREAS, the appellant acknowledges that one of the grounds upon which it filed its motion to dismiss in the Criminal Court proceeding was that DOB lacked jurisdiction over the Barge; and

WHEREAS, the Criminal Court Decision clearly states that appellant's "contention that the Department of Buildings lacks jurisdiction . is without merit"; and

WHEREAS, in holding that the City of New York has jurisdiction over the Barge, the Criminal Court necessarily found that DOB, specifically, had jurisdiction over the Barge, since the motion to dismiss was predicated on appellant's assertion that DOB did not have jurisdiction over the Barge, and such motion to dismiss was denied; and

WHEREAS, the issue raised in this proceeding, namely, whether DOB has jurisdiction over the Barge, is identical to the issue decided in the Criminal Court Decision; and

WHEREAS, as per the second element of collateral estoppel, whether the issue was necessarily decided in the prior proceeding, DOB states that the Criminal Court Decision contains a detailed analysis that addresses appellant's contention that DOB lacked jurisdiction over the premises; and

WHEREAS, the Board has determined that, based on the content of the Criminal Court Decision, it is collaterally estopped from deciding the issue of whether DOB has jurisdiction over the appellant; and

WHEREAS, both parties have submitted arguments and exhibits related to the merits of whether DOB had the jurisdiction to issue the summons and to order appellant to obtain a place of assembly permit and a certificate of occupancy; and

WHEREAS, since the Board is estopped from deciding de novo the issue of jurisdiction, it need not entertain the merits of appellant's claim.

Therefore it is resolved that the instant appeal is dismissed on the basis of collateral estoppel.

Adopted by the Board of Standards and Appeals, March 29, 2005.

WHEREAS, the Criminal Court Decision clearly addresses the City's jurisdiction over the Barge; and

WHEREAS, the appellant argues that the issue was not necessarily decided in the prior proceeding because there are inconsistent results between the Criminal Court Decision and the ECB Administrative Law Judge's decision, and, therefore, DOB has not met the second element of collateral estoppel; and

WHEREAS, the Board observes that the appellant has cited case law supporting such premise; and

WHEREAS, the full board of ECB has held that the principle of res judicata does not apply to decisions and orders of ECB Administrative Law Judges; and

WHEREAS, based upon the above, the jurisdictional issue was necessarily decided in the Criminal Court proceeding, notwithstanding the ECB Administrative Law Judge's determination; and

WHEREAS, as per the third element of collateral estoppel, whether there was a full and fair opportunity to litigate the issue in the prior proceeding, appellant argues that it was prevented from fully litigating the case because it did not have the opportunity to come to the Board prior to presenting its case in Criminal Court; and

WHEREAS, the Board has jurisdiction over final determinations of DOB, including summonses, and the appellant could have appealed the 2002 Summons had it so chosen; and

WHEREAS, however, appellant chose to challenge DOB's jurisdiction in Criminal Court; and

WHEREAS, Judge Murphy reviewed evidence submitted by the appellant, analyzed New York City statutes relating to jurisdiction of various New York City departments, and researched and cited New York State case law in arriving at his decision; and

WHEREAS, Judge Murphy dedicated the entire legal analysis portion of his decision to the issue of whether DOB had jurisdiction over the premises; and

WHEREAS, the appellant had a full and fair opportunity to litigate the issue of DOB's jurisdiction over appellant in the Criminal Court proceeding; 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

2-05-A

APPLICANT - Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Mr. & Mrs. Terrance Farrell, lessee.

SUBJECT - Application January 11, 2005 - Proposed enlargement of an existing one family dwelling, not fronting on a legally mapped street, and has a private disposal system which is being upgraded in the bed of a private service road, is contrary to Section 36, Article 3 of the General City Law, and Department of Buildings Policy.

PREMISES AFFECTED -37 Marion Walk, east side, 102.98' south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

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 Queens Borough Commissioner, dated December 15, 2004, acting on Department of Buildings Application No. 402017367, reads:

"A-1 The site and building is not fronting on an official mapped street; therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section C27-291 of the Administrative Code of the City of New York.

A-2 The existing private disposal system being upgraded is in the bed of a private service road contrary to Department of Buildings Policy."; and

WHEREAS, a public hearing was held on this application on March 15, 2005, after due notice by publication in the City Record, and then to decision on March 29, 2005; and

WHEREAS, by letter dated January 24, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 15, 2004, acting on Department of Buildings Application No.402017367 is modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked "Received January 11, 2005" - (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

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

THAT the approved plans shall be considered approved only for A-2 The upgraded private disposal system is in the bed of a private service road contrary to Department of Buildings Policy."; and

WHEREAS, a public hearing was held on this application on March 15, 2005, after due notice by publication in the City Record, and then to decision on March 29, 2005; and

WHEREAS, by letter dated January 24, 2005, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated December 15, 2004, acting on Department of Buildings Application No. 402015369 is modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked, "Received January 11, 2005" - (1)

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 29, 2005.

3-05-A

APPLICANT - Joseph A. Sherry, for Breezy Pt. Cooperative Inc., owner; Dale & Susan Salmonese; lessee.

SUBJECT - Application January 11, 2005 - Proposed enlargement of an existing one family dwelling, not fronting on a legally mapped street, and has a private disposal system which is being upgraded in the bed of a private service road, is contrary to Section 36, Article 3 of the General City Law, and Department of Buildings Policy.

PREMISES AFFECTED - 10 Doris Lane, south side, 42.02' west of Reid Avenue, Block 16350, Lot 400, Borough of Queens.

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 Queens Borough Commissioner, dated December 15, 2004, acting on Department of Buildings Application No. 402015369 reads:

"A-1 The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York.

sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 29, 2005.

45-04-A through 49-04-A

APPLICANT - Willy C. Yuin, R.A., for Gal Sela, owner.
SUBJECT - Application - Proposed one family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

- PREMISES AFFECTED -
 - 4 Tompkins Place, 125' east of Court Street, Block 522, Lot 20, Borough of Staten Island.
 - 8 Tompkins Place, 125' east of Court Street, Block 522, Lot 18, Borough of Staten Island.
 - 12 Tompkins Place, 125' east of Court Street, Block 522, Lot 17, Borough of Staten Island.
 - 16 Tompkins Place, 125' east of Court Street, Block 522, Lot 16, Borough of Staten Island.
 - 20 Tompkins Place, 125' east of Court Street, Block 522, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES - None.
ACTION OF THE BOARD - Application granted on condition.
THE VOTE TO CLOSE HEARING -
 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 decision of the Staten Island Borough Commissioner, dated January 27, 2004, acting on Department of Buildings Application Nos. 500648294, 8301, 8310, 8239, & 8338 reads:

"The proposed building(s) does not have at least 8% of the total perimeter of the building(s) fronting directly upon a legally mapped street, or frontage space is contrary to Section 27-291 of the Administrative Code and Section 36 of the General City Law. Therefore Board of Standards and Appeals approval is required."; and

WHEREAS, a public hearing was held on this application on Adopted by the Board of Standards and Appeals, March 29, 2005.

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

APPEARANCES - None.
THE VOTE TO CLOSE HEARING -
 Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele and Commissioner Chin.....4

January 25, 2005, after due notice by publication in the City Record, with a continued hearing on March 1, 2005, and then to decision on March 29, 2005; and

WHEREAS, by letter dated November 20, 2004, the Fire Department states that it has reviewed the above project and recommends that due to Tompkins Place being a dead end and having no turnaround, all proposed buildings shall be fully sprinklered, no parking shall be permitted on the street, and street signs shall be provided throughout the development to read "No Parking -Fire Lane"; and

WHEREAS, the owner has agreed to install sprinklers as per the recommendation of the Fire Department; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated January 27, 2004, acting on Department of Buildings Application Nos. 500648294, 8301, 8310, 8239, & 8338, is modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; on condition that construction shall substantially conform to the drawing filed with the application marked `Received March 16, 2005' - (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and on further condition:

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

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

THAT all proposed buildings shall be fully sprinklered as per Local Law 10 of 1999; and

THAT no parking shall be permitted on the street;

THAT street signs shall be provided throughout the development to read: No Parking -Fire Lane; 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.

Negative:.....0

ACTION OF THE BOARD - Laid over to April 5, 2005, at 10 A.M., for decision, hearing closed.

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.

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

APPEARANCES -

For Applicant: Patrick Jones, Esq., Joseph Trivisonno, Jennifer Walker and Jessica Rehki.

For Opposition: Janine A. Gaylard.

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

Pasquale Pacifico, Executive Director.

Adjourned: 10:25 A.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 29, 2005
2:00 P.M.**

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

ZONING CALENDAR

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

WHEREAS, on February 9, 1960, under Calendar No. 436-59-BZ, the Board granted a variance for a term of twenty years, to permit, in a local retail and residence use district, the erection and maintenance of a gasoline service station, with lubritorium, car washing, minor auto repairs, office and sales, storage room, parking and storage of motor vehicles, with a business entrance within 75 feet of a residence use district; and

WHEREAS, since the original grant, the applicant has obtained subsequent minor amendments and extensions of term of the variance, the most recent extension being granted on July 2, 1996; and

WHEREAS, the applicant states that from the time of the original variance, the site has been continuously occupied as a gasoline service station; and

WHEREAS, pursuant to Z.R. § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to Z.R. § 11-412, the Board may, in appropriate cases, allow minor alterations on sites subject to a pre-1961 variance; and

WHEREAS, the applicant submitted a sign analysis which reflect the proposed minor amendments to the signage and states that the signage is in full compliance with C1-2 district sign regulations; and

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.

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 waiver of the rules of practice and procedure, a re-opening to amend the resolution, and pursuant to Z.R. §§ 11-411 and 11-412, a renewal of term for a previously granted variance that expired on June 3, 2000, an alteration of the signage and an authorization of the existing convenience store as an accessory use; and

WHEREAS, a public hearing was held on this application on February 8, 2005, after due notice by publication in The City Record, with a continued hearing on March 8, 2005, and then to March 29, 2005 for decision; and

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

WHEREAS, the Queens Borough President and Community Board No. 7, Queens recommend approval of this application; and

WHEREAS, the premises is located on the southwest corner of Northern Boulevard and Parsons Boulevard, partially within an R6(C1-2) zoning district and partially within an R6 zoning district, and has a total lot area of 15,933 square feet; and

WHEREAS, the premises is improved upon with a 1,540 square foot, one-story gasoline service station used for automobile repairs, lubritorium, car wash, convenience store and office; and

WHEREAS, based upon its review of the record, the Board has determined that the evidence supports the requested extension of term and authorizations under Z.R. §§ 11-411 and 11-412.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, pursuant to Z.R. §§ 11-411 and 11-412, so that as amended this portion of the resolution shall read: "To renew the term of the variance for ten years from June 3, 2000 to expire on June 3, 2010, and to permit an alteration of the signage and an authorization of the existing convenience store as an accessory use 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 15, 2005' - (3) 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 there shall be no parking of vehicles on the sidewalk;
THAT there shall be no work on the engines of automobiles outside the repair bays;

THAT there shall be no body repair, burning or welding

performed on the premises;

THAT all curb cuts shall be as shown on BSA-approved plans;

THAT there shall be no sale of automobiles on the subject premises;

THAT fencing and landscaping shall be installed and maintained in accordance with the BSA-approved plans;

THAT all signage shall comply with the R6/C1-2 and R6 zoning district regulations;

THAT the terms of this grant shall be for ten (10) years from June 3, 2000, to expire on June 3, 2010;

THAT these conditions appear on the Certificate of Occupancy;

THAT all conditions from prior resolution(s) not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy if listed previously;

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

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. 4018275640)

Adopted by the Board of Standards and Appeals, March 29, 2005.

150-04-BZ

APPLICANT - The Agusta Group, for Shun K. Fung, owner.

SUBJECT - Application August 3, 2004 - under Z.R. §72-20 to permit, within a C6-2G zoning district in the Special Little Italy

WHEREAS, this is an application under Z.R. § 72-21, to permit, within a C6-2G zoning district in the Special Little Italy District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, an owner of property located near the site submitted correspondence to the Board, purportedly on behalf of others in the community, asking the Board not to grant the variance; and

WHEREAS, the original version of this application contemplated a five-story plus cellar mixed use building with a commercial use on the ground floor and residential on the upper floors, with a floor area ratio ("F.A.R.") of 4.7, a total floor area of 3,837 sq. ft., and a total building height of 73 ft., 6 in.; and

WHEREAS, in an interim proposal, the applicant lowered the height of each floor to 10 ft., and lowered the total building height to 50 ft., 6 in.; and

WHEREAS, the current version of this application contemplates a four-story building, with a complying F.A.R. of 4.1, a total floor area of 2,890 sq. ft., a total building height of 43 ft., 6 in., and 100% lot coverage; and

WHEREAS, the subject premises is an 815 sq. ft. lot, with a

District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122.

PREMISES AFFECTED - 129 Elizabeth Street, west side, 60'-5' south of Broome Street, Block 470, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Sol Korman.

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 19, 2004, acting on Department of Buildings Application No. 103299048, reads, in pertinent part:

"1. As per section ZR 109-01, Section ZR 35-21 still applies. Therefore the lot dimension is contrary to Section ZR 23-32. Minimum 1700 s.f. is required.

3. Proposed plan indicates lot coverage exceeding 60%; hence it is not permitted by ZR Section 109-122."; and

WHEREAS, a public hearing was held on this application on September 28, 2004, after due notice by publication in the City Record, with continued hearings on November 16, 2004, January 11, 2005, and February 15, 2005, and then to decision on March 29, 2005; and

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

depth of 23 ft., 8 in.; and

WHEREAS, the applicant represents that the lot is a pre-existing lot; and

WHEREAS, the applicant further represents that the lot size is less than half of the required lot size for any residential development; and

WHEREAS, the applicant states that the small lot size and shallow lot depth are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations; and

WHEREAS, the applicant represents that due to the small size of the lot, a complying development will result in uncomfortable living space for residential use and inadequate space for commercial development; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformity with current applicable zoning regulations; and

WHEREAS, the Board asked the applicant to consider an alternative conforming use scenario, such as a commercial use, that would be feasible on the subject site; and

WHEREAS, in response, the applicant submitted a feasibility analysis that showed that a conforming commercial use would not

result in a reasonable return; and

WHEREAS, the Board also asked the applicant to explore any income that could be generated from a commercial use in the cellar, such as a retail store or cellar storage space for a retail use; and

WHEREAS, the applicant represents that a retail store in the cellar is not feasible due to the small size of the site and the inability to comply with ADA and egress requirements; and

WHEREAS, the applicant also submitted a feasibility analysis of a public parking lot scenario, and determined that such use would not provide a reasonable return; and

WHEREAS, the Board requested that the applicant further evaluate alternative development scenarios using an F.A.R. of 4.1; and

WHEREAS, in response, the applicant analyzed the following three alternatives: Alternative A - ground floor with retail and one-car garage, studio on the 2nd floor, and a duplex on the 3rd and 4th floors; Alternative B - ground floor with a retail store, studio on the 2nd floor and a duplex on the 3rd and 4th floors; and Alternative C - one duplex on the ground and 2nd floors and another duplex on the 3rd and 4th floors; and

WHEREAS, at the Board's direction, the applicant revised its application to Alternative A, as described above; 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 the provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant represents that there are numerous multiple dwellings, between three and seven stories in height, surrounding the subject site; and

WHEREAS, the applicant represents that the height currently proposed for the building is consistent with the height of buildings in the neighborhood; and

WHEREAS, specifically, the applicant represents that buildings

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, 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 a C6-2G zoning district in the Special Little Italy District, the proposed construction of a new four-story building, with a retail store and one-car garage on the ground floor, a studio on the 2nd floor and a duplex on the 3rd and 4th floors, contrary to Z.R. §§ 23-32 and 109-122; on condition that

to the left of the subject site are approximately 63 ft. and 36 ft., 2 in., and a building to the right of the subject site is 41 ft., 6 in; and

WHEREAS, the applicant submitted a map of the surrounding neighborhood which illustrates the above representations; and

WHEREAS, the Board notes that the significant reduction in F.A.R. and height from the applicant's initial proposal to the applicant's current proposal is more compatible with the built conditions surrounding the site; and

WHEREAS, additionally, the Board notes that a 4.1 F.A.R. is the maximum permitted F.A.R. for interior lots in the Special Little Italy District; 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, 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. 04-BSA-158M dated April 1, 2004; and

all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 31, 2005" - (4) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 29, 2005.

233-04-BZ

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

SUBJECT - Application June 18, 2004 - under Z.R. §72-21 to permit, within an C4-3 zoning district, the proposed development of a twelve-story mixed-use commercial and community facility condominium building, with accessory

parking, which exceeds the permitted Floor Area Ratio, does not provide the required amount of parking spaces of loading berths, contemplates an eating and drinking establishment above the first floor, and exceeds the flight obstruction plane, contrary to Z.R. §§ 32-423, 33-122, 35-31, 36-20, 36-62 and 61-00.

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

COMMUNITY BOARD #7Q

APPEARANCES -

For Applicant: Kevin B. McGrath.

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 Queens Borough Commissioner, dated May 21, 2004, acting on Department of Buildings Application No. 401872354, reads, in pertinent part:

- " 1. Proposed restaurant for use group 8.9.12. shall be located only on a floor above or below grade and is contrary to section 32-423 Z.R.
- 2. Proposed maximum commercial floor area ratio exceeds 3.4 FAR permitted under C4-3 contrary to section 33-122 of Z.R.
- 3. Proposed maximum mixed use floor area ratio exceeds 4.8 FAR permitted under C4-3 contrary to section 35-31 of Z.R.
- 4. Proposed accessory off-street parking is less than amount required under C4-3 contrary to section 36-20 of Z.R.
- 5. Proposed accessory off-street loading berths less than

WHEREAS, the site is currently vacant; it was formally improved upon with the former Queens County Savings Bank building on the northeast corner of Main Street and 39th Avenue, as well as a privately-operated parking lot located on the vacant land to the northeast of said building; and

WHEREAS, the Bank building has been demolished; and

WHEREAS, the applicant states that the vacant land has been used continuously for over thirty years as a parking lot; and

WHEREAS, the applicant proposes to construct a twelve-story building, containing parking on the sub-cellar and cellar levels, retail space on the ground, first and second floor levels, two restaurants on the third floor, community facility space on the fourth floor, and office space on floors five through twelve; and

WHEREAS, the applicant represents that the sub-cellar and cellar levels, each containing 43,000 square feet, will allow for 401 parking spaces with valet parking only; the ground floor will have 38,000 square feet of space, the first floor 35,000 square feet, the second and third floors will each have 37,000 square feet, floors four through six will have 29,600 square feet each, and floors seven through twelve will each have 14,200 square feet; and

WHEREAS, the applicant notes that there is a change in

amount required under C4-3 contrary to section 36-62 of Z.R.

6. Proposed building height exceeds flight obstruction plane at EL. 184.5 AMSL contrary to section 61-00 of Z.R."; and

WHEREAS, a public hearing was held on this application on December 8, 2004 after due notice by publication in the City Record, with continued hearings on January 26, 2005 and March 1, 2005, and then to decision on March 29, 2005; and

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

WHEREAS, both the Queens Borough President and Community Board 7, Queens, recommend approval of this application; and

WHEREAS, this application also has the support of State Senator Stavisky and Assembly Members Grodenchik and McLaughlin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within a C4-3 zoning district, the proposed development of a twelve-story mixed-use commercial and community facility condominium building, with accessory parking, which exceeds the permitted Floor Area Ratio ("F.A.R."), does not provide the required amount of parking spaces or loading berths, contemplates an eating and drinking establishment above the first floor, and exceeds the flight obstruction plane, contrary to Z.R. §§ 32-423, 33-122, 35-31, 36-20, 36-62 and 61-00; and

WHEREAS, the premises is an irregularly shaped lot located in Flushing, Queens, on a block bordered by 38th and 39th Avenues and Main and 138th Streets; the total lot area is 43,596 sq. ft.; and

grade between Main Street and 138th Street of approximately 13 feet, and that, as a consequence, the ground floor space is not counted as Floor Area pursuant to the Z.R. since it is mostly underground; and

WHEREAS, the applicant also states that the site is affected by an access easement, which will have to be relocated after construction is complete, and replaced by a temporary easement during construction; and

WHEREAS, the proposed development triggers the following waiver requests: (1) a commercial F.A.R. of 5.64 (245,798 sq. ft. of zoning floor area) and a community facility F.A.R. of 0.66 (28,712 sq. ft. of zoning floor area), for a total F.A.R. of 6.3 (274,510 sq. ft. of total zoning floor area); the maximum permitted F.A.R. for a commercial building with community facility space in the subject zoning district is 4.8; (2) a total of 401 parking spaces on the cellar and sub-cellar levels; 719 parking spaces are required; (3) three off-street loading berths for trucks; five are required; (4) a proposed restaurant use on the third floor level; restaurants are not allowed above the first floor in the subject zoning district; and (5) a parapet wall on the roof-top and a portion of the elevator bulk head that penetrate the flight obstruction plane by approximately 10' 4 (however, no other height or setback waivers are 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 site is afflicted with substantial changes in grade level between Main Street and 138th Street as well as between 38th Avenue and 39th Avenue; (2) the site is affected by an underground water table; (3) the site is irregularly shaped; and (4) an existing easement runs across the site; and

WHEREAS, the applicant states that due to the grade changes, the ground level will be underground as it continues toward 138th Street, which makes it difficult to attract tenants to the ground level spaces, thus affecting income that could be gained from these spaces; and

WHEREAS, the applicant states that the grade changes will also necessitate the construction of steeper ramps into the parking garage, thus increasing construction costs; and

WHEREAS, finally, the applicant notes that the grade changes constrain the internal circulation of the proposed building, further affecting costs; and

WHEREAS, the applicant states that due to the soil conditions and water table issue, it is cost prohibitive to construct enough below-grade parking areas to accommodate the required amount of parking spaces, and

WHEREAS, in support of this claim, the applicant submitted an explanation of the groundwater conditions, as part of a report prepared by the engineering consultant; and

WHEREAS, the applicant states that irregular shape of the site increases the amount of perimeter wall and underpinning that must be constructed, thus increasing construction costs; and

WHEREAS, the applicant states the existing easement must be relocated subsequent to construction, and that a temporary construction easement must be created during construction, both of which will increase the construction time period and thus affect anticipated income; and

WHEREAS, the applicant has explained how each of these four claimed bases of uniqueness trigger the requested

WHEREAS, the applicant concluded that a complying development would not realize a reasonable return due to the site's constraints; specifically, the applicant has identified approximately \$8.7 million in premium costs related to the site's unique features that render a complying development infeasible; and

WHEREAS, the applicant also submitted an analysis of a 6.0 total F.A.R. building, with a lesser density, height and parking waiver, which was also shown to be infeasible; and

WHEREAS, at the Board's request, the applicant investigated the possibility of a development proposal with one more level of parking; and

WHEREAS, the applicant stated that due to the presence of the water table, the construction costs associated with the provision of one more below-grade level of parking would be cost-prohibitive; and

WHEREAS, in support of this statement, the applicant made supplemental submissions explaining the costs related to the construction of a third level of parking from its experts, including the engineer, architect, cost estimator and financial consultant; and

waivers; and

WHEREAS, the F.A.R. waiver is driven by the additional construction costs precipitated by the easement issue and the irregularity of the site, and the decreased revenue of the proposed retail space; the increased F.A.R. is necessary to offset these impacts; and

WHEREAS, the parking waiver is necessary to address the extraordinary construction costs that would be incurred to address the water table and soil conditions for a third level of parking; and

WHEREAS, loading berth waiver is necessary because the site's constraints lead to a particular building design that can not accommodate the efficient placement of all five loading berths, as there is no place to locate them without interfering with the parking ramps to the accessory parking levels or otherwise impacting an already constrained internal circulation layout; and

WHEREAS, the restaurant waiver is required because in order to attract main-line retail tenants, which provide income essential to the viability of the development, the street level spaces must be reserved for them; accordingly, the proposed restaurant must be sited on the third floor; and

WHEREAS, finally, the flight obstruction plane waiver arises from the need to accommodate the additional F.A.R. and the inability to build further below grade; and

WHEREAS, the Board observes that the applicant has established each of the bases of uniqueness and justified the requested waivers through the submission of expert testimony, all of which the Board finds credible and persuasive; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant submitted an initial feasibility study that analyzed a fully complying building; and

WHEREAS, specifically, the engineering consultant stated that were a third cellar created to accommodate more parking, the proposed slab would be below the water table and be subject to constant hydrostatic water pressure, which would be very expensive to address; and

WHEREAS, the cost estimator opined that the construction of a third level of parking would be close to six million dollars, which the applicant states would be cost-prohibitive to the extent that the owner could not realize a reasonable return even assuming that the other requested waivers were granted; and

WHEREAS, the applicant also submitted a statement from an expert detailing both the need for, and the cost associated with, the creation of a temporary egress walkway during construction; and

WHEREAS, at the Board's suggestion, the applicant evaluated a scenario that increased the community facility space, thus reducing the commercial F.A.R. waiver request; and

WHEREAS, the applicant's financial consultant responded by noting that increasing the amount of

community facility space would jeopardize the financial viability of the project, because building community facility space on a speculative basis, without a confirmed community facility tenant, is highly risky; 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 the use provisions applicable in the subject zoning district will provide a reasonable return; and

WHEREAS, the applicant states that the proposed development's lack of required parking, as well as its increased height and F.A.R., will not negatively affect the character of the neighborhood nor impact adjacent uses; and

WHEREAS, the applicant states that although an extensive parking waiver is requested, the provided parking will nonetheless be sufficient for the proposed uses in the building; and

WHEREAS, the applicant also observes that the proposed building is within a vibrant commercial district well-served by public transportation, surrounded by many buildings that have previously been granted parking waivers; and

WHEREAS, specifically, the applicant notes that to the south of the site is a six story office building; to the east is a 12 story office building under construction for which the BSA granted a parking variance, as well as a restaurant which was also granted a parking variance; and

WHEREAS, the applicant further notes that directly to the east a hotel was erected, thereby negating the need for the parking requirements of a C4-3 zoning district; adjacent to this structure is an office building, which was also granted a variance from the parking requirements; and

WHEREAS, the Board observes that across the street from the premises is located the 1,143 car municipal parking lot #1, with an open deck on which parking is permitted; and

WHEREAS, in further support of the contention that the parking waiver will not negatively affect the neighborhood, the applicant submitted a parking study and related memoranda, which illustrates that the proposed parking should accommodate the needs of the building's users; 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, 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 project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-217Q, dated January 27, 2005; and

WHEREAS, the EAS documents that the project as

WHEREAS, specifically, the applicant's environmental consultant, as part of the Environmental Assessment Statement, conducted a parking accumulation analysis for a 24-hour period for a typical weekday and for a typical Saturday, in order to calculate the maximum parking demand; and

WHEREAS, based upon this analysis, the consultant concluded that the peak parking accumulation for the weekday is projected to be 206 spaces occupied between the hours of 11 am and 12 pm and for a typical Saturday, 135 spaces occupied between the hours of 2 pm and 3pm; and

WHEREAS, the applicant stated that given the building's proposed 401 parking spaces, no significant parking impacts are anticipated; and

WHEREAS, the Board has reviewed the submitted evidence and agrees that the proposed parking waiver will not create any deleterious effects in the neighborhood, as the proposed development provides sufficient parking for the contemplated uses; and

WHEREAS, the Board finds that the proposed parking will not only accommodate the anticipated demand, but will also address the elimination of the 100 public parking spaces currently occupying the site; and

WHEREAS, the Board also agrees that the area is well-served by public parking facilities and public transportation; and

WHEREAS, the applicant submitted approvals for the height of the proposed building from the New York and New Jersey Port Authority and the United States Federal Aviation Administration; and

WHEREAS, in support of the contention that the proposed height of the building is not objectionable, the applicant also submitted a map, with photos, showing the location of other tall building in the area; and

WHEREAS, the Board has reviewed the map and photos, and has also conducted its own site visit, and concludes that the proposed bulk and height of the building will be compatible with the existing conditions in the immediate neighborhood; and

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; Construction Impacts and Public Health; and

WHEREAS, the New York City Department of Transportation ("DOT") has reviewed the EAS and Traffic and Parking data and studies submitted by the Applicant's Consultant. DOT has identified potentially significant traffic impacts at the following intersections for the 2006 Build Year: Main Street at Northern Boulevard; 38th Avenue at 138th Street; and 37th Avenue at 138th Street; and

WHEREAS, as noted in a December 10, 2004 letter, DOT has determined that there would not be any potential traffic impacts at the above-noted locations based on the proposed mitigation measures (signal timing changes and

geometric modifications and parking regulation changes) being implemented for the project; these measures are described in the EAS; and

WHEREAS, DOT will investigate the feasibility of implementing the proposed mitigation measures when the project is built and occupied; and

WHEREAS, the New York City Landmarks Preservation Commission has reviewed the Revised EAS pages dated January 21, 2005 relating to "Shadows" and "Historic Resources" and has no further concerns; and

WHEREAS, the Office of Environmental Planning 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 January 27, 2005; (2) Supplemental Environmental Studies relating to Hazardous Materials, Air Quality, Infrastructure, and Noise; and (3) a Construction Health and Safety Plan, dated February 2005; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality, infrastructure, 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, as reflected in its February 24, 2005, and January 20, 2005 letters, that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration, the information in the January 27, 2005 EAS, and the Supplemental Environmental Studies; 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 Type I Negative Declaration, with the condition stipulated below and prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

THAT this same Restrictive Declaration shall be recorded prior to issuance of any temporary or permanent certificate of occupancy, with a copy of same, with recording information, forwarded to the Board for inclusion in the case file;

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 29, 2005.

1977, as amended, and makes the required findings under Z.R. § 72-21, to permit, within an C4-3 zoning district, the proposed development of a twelve-story mixed-use commercial and community facility condominium building, with accessory parking, which exceeds the permitted Floor Area Ratio, does not provide the required amount of parking spaces of loading berths, contemplates an eating and drinking establishment above the first floor, and exceeds the flight obstruction plane, contrary to Z.R. §§ 32-423, 33-122, 35-31, 36-20, 36-62 and 61-00; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 15, 2005"-(8) sheets and "Received March 17, 2005"-(12) sheets; and on further condition:

THAT the applicant shall inform DOT six months prior to any anticipated initial occupancy of the proposed development so that DOT can investigate the feasibility of implementing the proposed mitigation measures prior to the project being built and occupied;

THAT the bulk parameters of the proposed building shall be as follows: (1) a commercial F.A.R. of 5.64 (245,798 sq. ft. of zoning floor area) and a community facility F.A.R. of .66 (28,712 sq. ft. of zoning floor area), for a total F.A.R. of 6.3. (274,510 sq. ft. of total zoning floor area); (2) twelve stories plus the ground floor; and (3) a total height of 194.9 ft., AMSL;

THAT a total of 401 parking spaces shall be provided in the accessory parking levels;

THAT three loading berths shall be provided, as illustrated on the BSA-approved plans;

THAT the interior layout, parking layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

THAT all site preparation and development at the subject site shall proceed in accordance with all of the terms of that certain Restrictive Declaration, dated January 18, 2005 and made by F & T Int'l (Flushing New York) LLC, including that provision of said declaration requiring soil sampling and remediation, and DEP issuance of a Notice of Satisfaction of such prior to issuance of a DOB permit or certificate of occupancy, except as otherwise provided for in the Restrictive Declaration;

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.

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

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

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 July 2, 2004, acting on Department of Buildings Application No. 301786119, reads:

- "1. Plans are contrary to Z.R. 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds the permitted .5.
2. Plans are contrary to Z.R. 23-141(b) in that the proposed Open Space is less than the minimum permitted .65 percent.
3. Plans are contrary to Z.R. 23-141(b) in that the proposed lot coverage exceeds maximum permitted .35 percent.
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than the minimum required 30'-0"; and

WHEREAS a public hearing was held on this application on January 11, 2005 after due notice by publication in The City Record, with continued hearings on February 8, 2005 and March 8, 2005, and then to decision on March 29, 2005; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, this is an application under Z.R. § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family residence (Use Group 1), which does not comply with the zoning requirements for Floor Area Ratio ("F.A.R."), Open Space Ratio ("O.S.R"), lot coverage and rear yard, contrary to Z.R. §§ 23-141(b) and 23-47; and

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

WHEREAS, the subject lots, which are adjacent to each other,

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of an existing single-family residence (Use Group 1), which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, lot coverage and rear yard, contrary to Z.R. §§ 23-141(b) and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked `Received March 15, 2005' - (8) sheets and `Received March 29, 2005' - (2) sheet; and on further condition:

THAT there shall be no habitable room in the cellar;

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

THAT no demolition shall be permitted of the portion of the existing building proposed to be retained, as illustrated on Plan Sheets A, B, and C;

THAT the total F.A.R. for the premises, including the attic, shall not exceed 0.87;

THAT the total attic floor area shall not exceed 758 sq. ft.;

are located on East 24th Street south of Avenue R, and have an aggregate total lot area of 6000 sq. ft.; and

WHEREAS, the lots are proposed to be merged into one tax lot, in order to accommodate the proposed development; and

WHEREAS, the applicant states that each of the lots are improved upon with existing single-family homes; and

WHEREAS, the applicant proposed the full demolition of the existing home on lot 70 and the retention and enlargement of a portion of the existing home on lot 71 over both lots; and

WHEREAS, for the proposed development, the applicant seeks an increase in the Floor Area Ratio to 0.87; this exceeds the maximum F.A.R. required in the subject zoning district (0.5); and

WHEREAS, the applicant seeks a reduction in the O.S.R to 59%, which is below the minimum required O.S.R. (65%); and

WHEREAS, the applicant also seeks an increase in the lot coverage to 2,455 sq. ft., which exceed the maximum permitted (2,100 sq. ft.); and

WHEREAS, finally, the applicant proposes a 26 ft. rear yard, which is less than the minimum required (30 ft.); and

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

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

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

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

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

THAT the proposed attic floor area shall be reviewed and confirmed by the Department of Buildings;

THAT the use and layout of the cellar shall be as approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, March 29, 2005.

270-04-BZ

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

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

COMMUNITY BOARD #14BK

APPEARANCES -

For Applicant: Janice Cahalane.

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 November 10, 2004, acting on Department of Buildings Application No. 301785085, reads:

"The proposed enlargement of the existing one family residence in an R2 zoning district:

- (1) creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 25-141 of the Zoning Resolution;
- (2) creates non-compliance with respect to the open space ratio and is contrary to section 23-141 of the Zoning Resolution;
- (3) creates non-compliance with respect to the side yard by not meeting the minimum requirements of section 23-461 of the Zoning Resolution; and
- (4) creates non-compliance with respect to the minimum rear yard by not meeting the requirements of section 23-47 of the Zoning Resolution."

WHEREAS a public hearing was held on this application on February 1, 2005 after due notice by publication in The City

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an

Record, with a continued hearing on March 1, 2005, and then to decision on March 29, 2005; and

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

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

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

WHEREAS, the subject lot is located on the east side of East 22nd Street, between Avenues K and L, and has a total lot area of approximately 4,000 sq. ft.; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,429 sq. ft. (0.61 Floor Area Ratio or "FAR") to 4,203 sq. ft. (1.05 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the Open Space Ratio ("OSR") from 122 to 114; the minimum open space ratio required is 150; and

WHEREAS, the proposed enlargement will reduce the rear yard from 24'-6" to 20'-0"; the minimum rear yard required is 30'-0"; and

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

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

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

existing single-family residence (Use Group 1), which does not comply with the zoning requirements for floor area, open space ratio, side and rear yards, contrary to Z.R. §§ 23-141, 23-461, 23-47; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked 'Received March 25, 2005' - (9) sheets; and on further condition:

THAT there shall be no habitable room in the cellar;

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

THAT the total F.A.R. on the premises, including the attic, shall not exceed 1.05;

THAT the total attic floor area shall not exceed 792 sq. ft.;

THAT the proposed attic floor area shall be reviewed and confirmed by the Department of Buildings;

THAT the use and layout of the cellar shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by

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

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

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

Adopted by the Board of Standards and Appeals, March 29, 2005.

291-03-BZ

APPLICANT - Stuart A. Klein, Esq., for 6202 & 6217 Realty Company, owner.

SUBJECT - Application September 4, 2003 - under Z.R. §72-21 to permit the proposed residential building, Use Group 2, located on a site in that is in an M1-1 and an R5 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 1380 62nd Street, northwest corner of 14th Avenue, Block 5733, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES -

For Applicant: Stuart Klein.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

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

369-03-BZ

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

SUBJECT - Application December 2, 2003 - under Z.R. §72-21 to permit part of the cellar and ground level of an existing two story building within an R7-1/C1-2 district to be occupied as physical cultural establishment.

For Applicant: Chris Wright.

ACTION OF THE BOARD - Laid over to May 17, 2005, at 1:30 P.M., for continued hearing.

187-04-BZ

APPLICANT - Eric Palatnik, P.C., for 182 MXB, LLC owner.

SUBJECT - Application May 4, 2004 - under Z.R. §72-21 to permit the proposed construction of a four story building, with eight dwelling units, Use Group 2, located in an R-5 zoning district, which does not comply with the zoning requirements for lot coverage, floor area, front yards, parking, height and perimeter wall, also the number of dwelling units, is contrary to Z.R. §23-141(c), §23-631(e), §23-45(a), §25-23(a) and §23-22.

PREMISES AFFECTED - 182 Malcolm X Boulevard, north west corner of Madison Street, Block 1642, Lot 48, Borough of Brooklyn.

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

COMMUNITY BOARD #6Q

APPEARANCES -

For Applicant: Janice Cahalane.

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

138-04-BZ

APPLICANT - Sheldon Lobel, P.C., for Cong. Machne Chaim, Inc., owner; Yeshiva Bais Sorah, lessee.

SUBJECT - Application March 24, 2004 - under Z.R. §73-19 to request a special permit for a school, Use Group 3, within an M1-1 Zoning District to vary Z.R. §42-00 so as to permit the school on the Premises.

PREMISES AFFECTED - 6101-6123 16th Avenue, 16th Avenue between 61st and 62nd Streets, Block 5524, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES -

For Applicant: Sheldon Lobel.

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

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

APPEARANCES -

COMMUNITY BOARD #3BK

APPEARANCES -

For Applicant: Eric Palatnik.

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

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

APPEARANCES -

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

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



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

APPEARANCES -

For Applicant: Joseph P. Morsellino, Dr.James M. Cervino, John Berry, Chames Apecian, Gene Kelty, Jr. and Fred J. Mazzarello.

ACTION OF THE BOARD - Laid over to May 17, 2005, at 1:30 P.M., for continued hearing.



MINUTES

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

APPEARANCES -

For Applicant: Joseph P. Morsellino, Dr. James M. Cervino, John Berry, Chames Apecian, Gene Kelty, Jr. and Fred J. Mazzarello.

ACTION OF THE BOARD - Laid over to May 17, 2005, at 1:30 P.M., for continued hearing.

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

Pasquale Pacifico, Executive Director.

Adjourned: 5:15 P.M.

230-04-BZ

APPLICANT - Sheldon Lobel, P.C., for La Perst, LLC, owner.

SUBJECT - Application June 16, 2004 - under Z.R. §72-21 to permit the legalization of the residential conversion of a building located in an M1-2 zoning district.

PREMISES AFFECTED - 260 Moore Street, between White Street and Bogart Street), Block 3110, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES -

For Applicant: Janice Cahalane.

THE VOTE TO CLOSE 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 decision, hearing closed.

319-04-BZ

APPLICANT - Steven Sinacori/Stadtmauer Bailkin, for Joseph De Simone, owner.

SUBJECT - Application September 20, 2004 - under Z.R. §72-21 to permit, in an R5 (Infill) district, approval sought to erect a four-story, 45 foot eight inch high, residential building on a currently unimproved lot consisting of 25,413 SF. There are proposed 39 dwelling units with 28 parking spaces in the cellar. The proposed building is non-compliant to wall height and total height requirements.

PREMISES AFFECTED - 35 McDonald Avenue, a/k/a 25/47 McDonald Avenue, east side, between 20th Street and Terrace Place, Block 895, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES -

For Applicant: Steven Sinacori.

For Opposition: Robbin Block, Holly Sears, Peter Levinson, Amy Hansmann and ?,

CORRECTIONS

*CORRECTION

This resolution adopted on January 11, 2005, under Calendar No. 218-96-BZ and printed in Volume 90, Bulletin Nos. 1-3, is hereby corrected to read as follows:

218-96-BZ

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

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

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

COMMUNITY BOARD #6M

APPEARANCES - None.

ACTION OF THE BOARD - Rules of Practice and Procedure waived, application reopened, and time to complete construction extended.

THE VOTE TO GRANT -

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

Commissioner Chin.....5

Negative:.....0

THE RESOLUTION-

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, and an extension of time to complete construction and obtain a Certificate of Occupancy; and

WHEREAS, a public hearing was held on this application on December 7, 2004, after due notice by publication in The City Record, and then to decision on January 11, 2005; and

WHEREAS, on May 20, 1997, the Board granted an application under the subject calendar number to permit a one-story enlargement above the basement level at the rear of an existing community facility building, occupied by the Armenian Apostolic Church; and

WHEREAS, on December 11, 2001, the Board granted an application for an extension of time to complete construction for a period of two years, expiring on December 11, 2003; and

WHEREAS, the applicant represents that due to continued and unforeseeable adverse economic conditions, the construction has not been completed, and the Certificate of Occupancy application has been delayed; and

WHEREAS, the applicant states that the community facility has now obtained the required funds to undertake the expense of construction, and has submitted sufficient evidence of this to the Board.

Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 20, 1997 as amended on December 11, 2001, so that as amended this portion of the resolution shall read: "To permit an extension of the time to complete construction for an additional two (2) years from the date of this resolution to expire on January 11, 2007 on condition:

THAT a new certificate of occupancy be obtained within four years from the date of this grant.

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

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

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

Adopted by the Board of Standards and Appeals, January 11, 2005.

***The resolution has been corrected in the part which read: "...to obtain a Certificate of Occupancy...;" now reads: "...to complete construction... and to add to the conditions "THAT a new certificate of occupancy be obtained within four years from the date of this grant". Corrected in Bulletin Nos. 15-16, Vol. 90, dated April 7, 2005.**

*CORRECTION

This resolution adopted on March 1, 2005, under Calendar No. 350-04-BZ and printed in Volume 90, Bulletin Nos. 10-11, is hereby corrected to read as follows:

350-04-BZ

CEQR #05-BSA-055X

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

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

house an HVAC cooling tower. The elevation of the tower will be 621 feet, including the height of the existing structure.

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

COMMUNITY BOARD #7BX

CORRECTIONS

APPEARANCES -

For Applicant: Meloney McMony.

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 October 29, 2004, acting on Department of Buildings Application No. 200912584, reads in pertinent part:

“Non-accessory radio tower requires Board of Standards and Appeals special permit pursuant to Z.R. Section 73-30.”; and

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

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

WHEREAS, Community Board 7, Bronx, the Bronx Borough President, Congressman Eliot L. Engel, and the Mosholu Preservation Corporation recommend approval of the application; and

WHEREAS, this is an application under Z.R. §§ 73-30 and 73-03, to permit the proposed construction of a non-accessory radio tower and antenna for a radio station within an R7-1 zoning district with a partial C1-3 overlay, which is contrary to Z.R. §§ 22-21 and 22-11; and

WHEREAS, pursuant to Z.R. § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the antenna tower 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 also states that it has been looking for a new site for its radio tower for the broadcast of its public radio station, WFUV, since the mid-1990’s; and

WHEREAS, the applicant notes that Montefiore Medical Center offered it a site for its radio tower atop its residential building at 3450 Wayne Avenue in 2004; and

WHEREAS, the antenna tower will be located on a rooftop enclosure that currently houses 60 antenna structures and is high above the urban and residential streetscape; and

WHEREAS, that the antenna tower will be constructed in a single, 6-month phase so as to minimize any noise and privacy impacts; and

WHEREAS, the applicant states that once the antenna tower is operating no employees associated with the antenna tower will reside in the Montefiore Medical Center, and any on-site visits for continuing inspection, maintenance and repairs to the antenna tower structure and related equipment will be so intermittent and of such short duration that they will

not cause any significant disruption to the privacy of the residents of Montefiore Medical Center; and

WHEREAS, the applicant also states that the antenna tower has been designed not to create a significant visual obstruction or cast a significant shadow; and

WHEREAS, the applicant observes that the antenna tower will be located on a building that is located at the edge of a mixed use (C1-3) area that accommodates a number of non-residential uses in the immediate project area; and

WHEREAS, the proposed antenna tower will consist of three parts: a mechanical equipment room/support structure; a tower that will be 80 feet high and an antenna mast that will be 60 feet high; and a three foot beacon atop; and

WHEREAS, the applicant represents that the antenna tower complies with the use and bulk requirements of the Zoning Resolution and is within the applicable sky exposure plane; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed antenna tower 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 proposed project will not interfere with any pending public improvement project; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and grants a special permit under Z.R. §§ 73-03 and 73-30, to permit the proposed construction of a non-accessory radio tower and antenna for a radio station within an R7-1 zoning district with a partial C1-3 overlay, which is contrary to Z.R. §§ 22-21 and 22-11, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received October 29, 2004”-(4) sheets; and *on further condition*;

THAT no commercial or retail signage will be posted;

THAT any security lighting (not including any lighting

positioned down and away from residential uses;

CORRECTIONS

installed on the tower for FAA-compliance purposes)will be

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 1, 2005.

***The resolution has been corrected in the part of the conditions which read: "THAT any lighting will be positioned down and away from residential uses;" now reads: "THAT any security lighting (not including any lighting installed on the tower for FAA-compliance purposes)will be positioned down and away from residential uses";. Corrected in Bulletin Nos. 15-16, Vol. 90, dated April 7, 2005.**

Pasquale Pacifico, Executive Director.