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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 91, No. 15

April 13, 2006

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## DIRECTORY

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349-05-BZ            325 East 101<sup>st</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to April 4, 2006  
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**58-06-BZ**

499 Broadway, Through lot running between Broadway and Mercer Street approximately 100 feet north of Broome Street., Block 484, Lot 23, Borough of **Manhattan**, **Community Board: 2**. Under 72-21 - To allow the conversion of the first floor and cellar to commercial (UG6), which is contrary to Section 42-10 of the ZR.  
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**59-06-BZ**

1006 East 233rd Street, Southeast corner of Paulding Avenue., Block 4879, Lot 40, Borough of **Bronx**, **Community Board: 12**. Under 72-21 - Propose to remove existing retail store (UG6) at front of perperty and construct three (3) new retail stores (UG6) along rear property line with accessory parking and an illuminated ground sign at the intersection.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**MAY 9, 2006, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 9, 2006, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **APPEALS CALENDAR**

### **206-05-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Joanne & Thomas DeRosa, lessee. SUBJECT – Application September 6, 2005 – Proposed construction of an existing single family frame dwelling situated in the bed of a mapped street contrary to General City Law Article 3, Section 35 and upgrading an existing private disposal system which is contrary to Department of Buildings policy. Premises is located within an R4 zoning district.

PREMISES AFFECTED – 9 Bayside Drive, in the bed of Bayside Drive 109.72 northwest of Rockaway Point Boulevard, Block 16340, part of Lot 50, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **294-05-A thru 296-05-A**

APPLICANT – Rothkrug RothkrugWeinberg & Spector, LLP for Pleasant Place, LLC, owner.

SUBJECT – Application September 29, 2005 – Proposed construction of three two- family homes not fronting on a mapped street is contrary to GCL 36, Article 3. Current R3-2 Zoning District.

PREMISES AFFECTED – 146-34, 36, 38 Pleasant Place, Queens, West side of Pleasant Place, 100ft north of intersection with 146<sup>th</sup> Drive, Block 13351, Tentative Lot #s 100, 101, 103, Borough of Queens

**COMMUNITY BOARD #13Q**

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### **372-05-BZY/373-05-BZY**

APPLICANT – Adam Rothkrug, for Woodrow Estates North LLC, owner.

SUBJECT – Application December 27, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R4 Zoning District. Current R3-A (HS) Zoning District.

PREMISES AFFECTED – 28 Webster Avenue (aka 101 Stanley Avenue) Block 111, Lot 15, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 9, 2006, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **15-06-BZ**

APPLICANT – Eric Palatnik, PC for the Yeshiva Tifereth Moshe, Owner.

SUBJECT – Application January 26, 2006 – Zoning Variance (bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the construction of a new yeshiva located in an R4 zoning district. The proposed variance would allow modifications of zoning requirements for lot coverage, side yards, rear yard and height and setback; contrary to Z.R. §§24-11, 24-35, 24-36, 24-521 and 24-551.

PREMISES AFFECTED – 147-22 73<sup>rd</sup> Avenue located on the south side of 73<sup>rd</sup> Avenue between 147<sup>th</sup> and 150<sup>th</sup> streets (Block 6682, Lots 11 & 13), Borough of Queens

**COMMUNITY BOARD #8Q**

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*Jeff Mulligan, Executive Director*

**MAY 9, 2006, 1:30 P.M.**

# MINUTES

## REGULAR MEETING TUESDAY MORNING, APRIL 4, 2006 10:00 A.M.

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

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, January 31, 2006, were approved as printed in the Bulletin of February 9, 2006, Volume 91, No. 6. If there be no objection, it is so ordered.

### SPECIAL ORDER CALENDAR

#### 148-03-BZ

APPLICANT – Francis R. Angelino, Esq., for North West Real Estate, LLC, owner.

SUBJECT – Application August 18, 2005 – Reopening for an amendment to a previously approved five story and penthouse mixed commercial and residential building to add a mezzanine in the residential penthouse, located in an M1-6 zoning district.

PREMISES AFFECTED – 111/13 West 28<sup>th</sup> Street, between Sixth and Seventh Avenues, 164'-4" west of Sixth Avenue, Block 804, Lots 1101-1105 (formerly 28 and 29), Borough of Manhattan.

#### COMMUNITY BOARD #5M

##### APPEARANCES –

For Applicant: Francis R. Angelino and David W. Sinclair.

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

##### THE VOTE TO GRANT –

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

Negative:.....0

##### THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in *The City Record*, with a continued hearing on March 14, 2006, and then to decision on April 4, 2006; and

WHEREAS, the subject site is located on the north side of West 28<sup>th</sup> Street, west of Sixth Avenue; and

WHEREAS, on October 23, 2003, the Board granted an application under ZR §72-21, to permit, in an M1-6 zoning district, the development of residential condominiums (Use Group 2) in an existing building and the legalization of the existing residential units; and

WHEREAS, on December 10, 2004, the Board approved, by letter, the applicant's request for minor changes to the approved plans, including moving the penthouse façade wall 1'-0" to the south to accommodate a new fire stair/elevator wall and reducing the overall height of the street wall by 5'-2"; and

WHEREAS, the applicant represents that lowering the

street wall, resulted in the penthouse floor having a height of 17 ft.; and

WHEREAS, the applicant further represents that structural brace beams will be added to support the 17 ft. columns within the penthouse walls; and

WHEREAS, the applicant proposes to use the brace beams at the rear of the penthouse to support a mezzanine of approximately 1,075.4 sq. ft.; and

WHEREAS, the mezzanine would be completely within the approved exterior envelope of the building and would not result in any exterior changes; and

WHEREAS, the applicant states that even with the addition of the mezzanine, the revised FAR of 5.19 (4.76 was previously approved) is well below the permitted FAR of 10.0 permitted in the zoning district; and

WHEREAS, the applicant provided a feasibility study noting that this minor change only slightly increases the rate of return, but makes the project feasible; and

WHEREAS, the Board finds that this minor change does not affect the finding that the approved variance is the minimum necessary to afford relief; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on October 23, 2003, so that as amended this portion of the resolution shall read: "to permit the construction of a penthouse mezzanine; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 21, 2006"- (4) sheets; and *on further condition*:

THAT the maximum FAR shall be 5.19;

THAT the addition of the penthouse mezzanine will not alter the exterior of the building;

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. 103390910)

Adopted by the Board of Standards and Appeals, April 4, 2006.

#### 540-53-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Marbridge Realty Co., Inc., owner.

SUBJECT – Application October 25, 2005 – Extension of

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# MINUTES

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Term/Waiver for an existing parking lot accessory to a commercial building. The premise is located in a C2-4 and R3-1 zoning district.

PREMISES AFFECTED – 87-17 111<sup>th</sup> Street, Block 9301, Lots 124, 125, Borough of Queens.

**COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** - Laid over to May 2, 2006, at 10 A.M., for decision, hearing closed.

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**295-77-BZ**

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates, LLC, owner.

SUBJECT – Application September 27, 2005 – Extension of Term/Waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant’s area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87<sup>th</sup> and 88<sup>th</sup> Streets, Block 1435, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

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**545-78-BZ**

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board’s rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250 feet north of the intersection of Pine Street and Cozine Avenue, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Patrick Jones.

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 10 A.M., for continued hearing.

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**231-04-A**

APPLICANT – Joseph P. Morsellino, Esq., for Chri Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243<sup>rd</sup> Street, Block 8103, Lot 5, Borough of Queens.

**COMMUNITY BOARD#11Q**

APPEARANCES –

For Applicant: Joseph Morsellino.

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 10 A.M., for deferred decision.

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**162-05-A**

APPLICANT – Jay Segal, Esq., Greenberg & Traurig, LLP, for William R. Rupp, owner.

SUBJECT – Application July 15, 2005 – To appeal a final determination from the Department of Buildings dated June 15, 2005 in which they contend that the a privacy wall must be demolished because it exceeds the height limitation set by the Building Code and that the project engineer has failed to show that the Wall has been engineered and built according to code.

PREMISES AFFECTED – 19-21 Beekman Place, a/k/a 461 East 50<sup>th</sup> Street, located at east side of Beekman Place between East 50<sup>th</sup> Street and East 51<sup>st</sup> Street, Block 1361, Lot 117, Borough of Manhattan.

**COMMUNITY BOARD#6BK**

APPEARANCES –

For Applicant: Jay Segal

For Opposition: Stephen Rizzo.

For Administration: Janine Gaylard, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

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**364-05-A & 365-05-A**

APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises

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# MINUTES

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has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 87-30 and 87-32 167<sup>th</sup> Street, 252’ north of the corner formed by the intersection of Hillside Avenue and 167<sup>th</sup> Street, Block 9838, Lots 114 and 116, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Administration: Janine Gaylard, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to June 6, 2006, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director.*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, APRIL 4, 2006 1:30 P.M.

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

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## ZONING CALENDAR

### 359-04-BZ

APPLICANT – Eric Palatnik, P.C., for Alfred Savegh, owner.

SUBJECT – Application November 12, 2004 – Under Z.R. §73-622 to permit the legalization of an enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141 and §23-47.

PREMISES AFFECTED – 1425 East 24<sup>th</sup> Street, between Avenues "N" and "O", Block 7678, Lot 40, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 14, 2004, acting on Department of Buildings Application No. 300414031, reads,

in pertinent part:

“Proposed legalization of existing floor area ratio (ZR Section 23-141), open space ratio (ZR Section 23-141) and rear yard (ZR Section 23-47) requires a special permit from the New York City Board of Standards and Appeals.”

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed legalization of an existing rear yard enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), Open Space Ratio (OSR), and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 4, 2006; 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 disapproval of this application due to its policy to deny legalizations; and

WHEREAS, the subject lot is located on East 24<sup>th</sup> Street between Avenue N and Avenue O; and

WHEREAS, the subject lot has a total lot area of 3,500 sq. ft.; and

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

WHEREAS, the applicant has increased the floor area from the pre-existing 1,966 sq. ft. (0.56 FAR) to 2,366 sq. ft. (0.68 FAR); the maximum floor area permitted is 1,750 sq. ft. (0.50 FAR); and

WHEREAS, the enlargement decreased the OSR from 127 percent to 98 percent; the minimum required OSR is 150 percent; and

WHEREAS, the enlargement reduced the size of the rear yard from 34’-0” to 24’-0”;

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0” of the rear lot line; and

WHEREAS, the complying side yards of 5’-5” and 9’-7”, and complying front yard of 17’-0” have been maintained; and

WHEREAS, both the complying wall height of 20’-1” and the pre-existing non-complying total height of 26’-0” have been maintained; and

WHEREAS, the Board finds that the minor enlargement at the rear of the building neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

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

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made under ZR § 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 617.3 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 ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an existing rear yard enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, Open Space Ratio, and rear yard, contrary to ZR §§ 23-14 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "March 21, 2006"-(8) sheets; and *on further condition*:

THAT the total FAR on the premises shall not exceed 0.68;

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 objections(s) only;

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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

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## 26-05-BZ

### CEQR #06-BSA-092K

APPLICANT – Cozen O’Connor, for Tikvah Realty, LLC, owner.

SUBJECT – Application February 11, 2005 – Under Z.R. §72-21 to permit the proposed bulk variance, to facilitate the new construction of an 89 room hotel on floors 4-6, catering facility on floors 1-3, ground floor retail and three levels of underground parking, which creates non-compliance with regards to floor area, rear yard, interior lot, permitted obstructions in the rear yard, setback, sky exposure plane, loading berths and accessory off-street parking spaces, is contrary to Z.R. §33-122, §33-26, §33-432, §36-21, §33-23 and §36-62.

PREMISES AFFECTED – 1702/28 East 9<sup>th</sup> Street, a/k/a 815 Kings Highway, west side, between Kings Highway and Quentin Road, Block 6665, Lots 7, 12 and 15, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Barbara Hair.

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

**THE VOTE TO WITHDRAW** –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, April

4, 2006.

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## 130-05-BZ

### CEQR #05-BSA-133M

APPLICANT – Elise Wagner, Esq., Kramer Levin, for Hudson Island, LLC, owner.

SUBJECT – Application May 25, 2005 – Under Z.R. §72-21 to permit the development of a mixed-use, nine-story building with ground level retail, and a small amount of community facility space, and approximately 25 residential units on the upper floors within an M1-5B zoning district.

PREMISES AFFECTED – 74-88 Avenue of the Americas, a/k/a 11-15 Thompson Street and 27-31 Grand Street, east side of Avenue of the Americas, between Grand and Canal Streets, Block 227, Lots 50, 52 and 56, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 27, 2004, acting on Department of Buildings Application No. 104062648, reads, in pertinent part:

“The proposed residential use . . . in a M1-5B zoning district is contrary to ZR 42-00 and therefore not permitted.

Proposed commercial use (use group 6) in a M1-5B zoning district is contrary to Z.R. 42-14 D and therefore not permitted.”; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site within an M1-5B zoning district, an eight-story mixed-use residential/retail building with retail space on the ground floor and 23 dwelling units on the upper floors, which is contrary to Z.R. §§ 42-10 and 42-14(D); and

WHEREAS, the applicant proposes to construct an eight-story mixed-use residential and retail building, with 23 residential units and ground floor retail, an 80 ft. street wall, a maximum of 116 ft. in total height (without bulkheads), a maximum of 150 ft. in total height with bulkheads, a total Floor Area Ratio (FAR) of 5.89, a residential FAR of 5.3, and a retail FAR of 0.59; no parking will be provided; and

WHEREAS, the applicant represents that the building will be designed with “green” technology design features that will conserve energy and protect the environment; and

WHEREAS, the applicant initially proposed to construct a nine-story mixed-use residential and retail building, with 25 residential units and ground floor retail and community facility space, an 80 ft. street wall, 116 ft. in total height (without bulkheads), and with a total FAR of 6.5; and

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WHEREAS, a public hearing was held on this application on November 1, 1005, after due notice by publication in the *City Record*, with continued hearings on December 6, 2005, January 24, 2006, March 7, 2006, and then to decision on April 4, 2006; and

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

WHEREAS, Community Board No. 2, Manhattan, recommends approval of the application on condition that the FAR of the proposed building be limited to 5.0 and that unit size be a minimum of 1,200 sq. ft.; and

WHEREAS, the subject premises is located on the east side of the Avenue of the Americas, between Grand and Canal Streets, and is an 11,330 sq. ft. site consisting of three tax lots (50, 52, and 56); and

WHEREAS, Lot 50 is occupied by a one-story diner, Lot 52 is occupied by a paved parking lot, and Lot 56 is occupied with a two-story garage and photo shop; and

WHEREAS, the applicant states that the existing improvements on the site will be removed; and

WHEREAS, during the hearing process, the Board suggested to the applicant that the initially proposed 6.5 FAR building did not represent the minimum variance, and asked that a reduced FAR building be evaluated and submitted; and

WHEREAS, the applicant subsequently revised the proposal to the current version; the primary modifications were the removal of a courtyard and the elimination of one of the two proposed cores, which were features present in the initial design; and

WHEREAS, the applicant states that these modifications allowed the reduction in FAR and height, and increased the proposed building's ratio of sellable floor area to gross floor area; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is trapezoidal in shape and relatively narrow; (2) the site is burdened with a high water table; (3) the site has a thick and unstable fill layer; (4) the site's soil is contaminated; (5) the site is abutted by two relatively narrow streets on two of its three street frontages; and (6) the site is proximate to active subway tunnels; and

WHEREAS, as an initial matter, the Board observes that while the shape is the result of the merger of the three tax lots, this merger actually helps to alleviate inherent shape and size constraints of each individual tax lot; nonetheless, some hardship based upon shape and size remains; and

WHEREAS, as a further threshold matter, the Board notes that the specific combination of unique physical features, and the degree to which they impact conforming development, is particular to the site; and

WHEREAS, this is evidenced by a map and chart of soft and proposed development sites (some of which have been the subject of Board actions), submitted by the applicant during the

course of the hearing process; and

WHEREAS, the map and chart set forth twelve other sites in the area of the subject site; and

WHEREAS, for nine of these sites, the chart illustrates the sub-surface conditions, the depth to bedrock, and the adjacency of a subway; and

WHEREAS, the chart then provides remarks comparing the nine sites to the subject site; and

WHEREAS, the chart illustrates that unlike the other nine sites, the subject site is the only site that is afflicted by the particular combination of unique physical conditions listed above; and

WHEREAS, while some of the other sites may have similar soil conditions, exposure to floor risk, or adjacency to subways, none suffer all these conditions to the same degree or in the same combination as the subject site; and

WHEREAS, as to those sites that were the subject of Board action, two did not present subsurface conditions as a hardship, one was not adjacent to a subway, and one had less flood risk and the ability to use slightly shorter piles; and

WHEREAS, the Board notes that, in response to its request for further clarification, the applicant explained that while some of the other sites are near subways, the subject site is one of the few in the area where a subway tunnel extends past the curb line onto the property; and

WHEREAS, the applicant also showed that the subway tunnel is located at an unusually shallow depth where it extends into the curb line, and that, in addition to the tunnel, there is a stairwell to the nearby station that must also be protected and which further complicates construction; and

WHEREAS, the Board further notes that the site also suffers from environmental contamination and adjacency to narrow streets; and

WHEREAS, the Board concludes that the subject site is singularly afflicted in terms of the amount of unique physical conditions and the manner in which they combine to affect conforming development; and

WHEREAS, as to the specific features, the applicant states in the February 17, 2006 submission that the combination of the site's unusual proximity to an active subway tunnel, its relative narrowness and trapezoidal shape, and its unstable soil conditions require a drilled piles foundation system, which is more expensive than a typical spread footing foundation system; and

WHEREAS, the applicant supported this statement with a letter prepared by its engineering consultant; and

WHEREAS, specifically, the letter from the engineering consultant states that due to the subsurface conditions consisting of a deep fill layer overlying organic materials deposited in a previous marsh, the building should be supported on deep foundations; and

WHEREAS, the letter goes on to state that the choice of type of piles required for this foundation is constrained by the adjacency of the subway tunnel; and

WHEREAS, the letter concludes that the use of drilled piles may be the best solution because it avoids the use of driven

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piles, which are not permitted by the New York City Transit Authority (TA) in such close proximity to a subway line, and because the poor soil conditions demand drilled piles as a means to minimize vibration that could affect the tunnel even at locations on the site where the TA might allow other types of piles; and

WHEREAS, the applicant further states that because of the proximity of the subway tunnel, the TA is expected to require a test pit, which must be dug by hand to avoid damage to the tunnel; and

WHEREAS, this statement is supported by a letter prepared by the construction consultant; and

WHEREAS, specifically, this letter states that the TA will require an assessment of the subway wall prior to the commencement of construction, which necessitates the digging of a test pit along the tunnel wall; and

WHEREAS, the applicant notes that the combination of the subway tunnel and the narrowness of Grant and Thompson Streets precludes the use of a more economic crawler crane during construction, and instead requires the use of a more expensive tower crane; and

WHEREAS, the applicant also states that the proximity of the tunnel necessitates the placement of steel plates at the subway grating, in order to accommodate the construction bridge and hoist; and

WHEREAS, again, the letter from the construction consultant discusses these problems, noting that the TA will not accept the weight of a crawler crane near the tunnel; and

WHEREAS, the letter also points out that because the tunnel extends past the curb line, the TA is expected to control the construction of the building's foundation over a far higher proportion of the site than it does over property that is separated from a tunnel by a sidewalk width and that has more stable soil conditions; and

WHEREAS, finally, the applicant states that the site's soil and groundwater are contaminated, which must be remediated; and

WHEREAS, this statement is supported by a letter from the applicant's environmental consultant, which describes the type and degree of contamination, caused by past gasoline spills; and

WHEREAS, the Board has reviewed these claims and the evidence submitted in support of them, and agrees that said conditions lead to increased construction costs in developing the site with a conforming development; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenarios: (1) an as of right office scenario, with an FAR of 5.0; and (2) an as of right hotel, with an FAR of 5.0; and

WHEREAS, the applicant concluded that such scenarios

would result in a loss, due to the premium construction costs related to the above-stated unique physical conditions; and

WHEREAS, however, the Board had concerns regarding certain aspects of this study, and identified them at hearing; and

WHEREAS, specifically, the Board questioned: (1) the actual amount of the premium construction costs related to the identified hardships; (2) the claimed overall construction costs; (3) the claimed sell out period; and (4) the comparables uses to establish the sell-out price of the condominium units; and

WHEREAS, the applicant, in subsequent submissions, satisfactorily addressed each of these concerns; and

WHEREAS, the applicant provided more detailed information about the premium construction costs, as well as eliminated certain costs as hardship costs; established that the overall construction costs per square foot were comparable to other similar construction projects, and also updated these costs; modified the sell-out period per the Board's instruction; and revised the site valuation comparables; and

WHEREAS, the eliminated costs included expenditures related to delays associated with the New York City Transit Authority (TA) review period (due to the proximity of the subway), TA communications in general, TA staffing needs during construction, increased perimeter construction, and insulating development from vibrations from the subway; and

WHEREAS, the applicant recharacterized these costs to the base construction budget, and did not claim them as hardship costs; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant provided the Board with a detailed description of the neighborhood's use and bulk context; and

WHEREAS, specifically, the applicant states that the site straddles the border between (i) SoHo, (ii) Hudson Square and (iii) Tribeca and is located at the intersection of Avenue of the Americas, Canal Street and Thompson Street in Manhattan; and

WHEREAS, the applicant states that the immediate area is predominantly residential and commercial uses with some remaining manufacturing/industrial uses; and

WHEREAS, the applicant concludes that the development of the proposed building, with its mix of residential units with ground floor retail and community facility use would reinforce the mixed-use character of the surrounding neighborhood; and

WHEREAS, the applicant notes that this combination of uses would be similar to the residential and retail character

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that currently exists along Grand Street; in addition, the SoHo area contains many non-conforming residential buildings that pre-date the M1-5B zoning; and

WHEREAS, the applicant observes that the Hudson Square neighborhood, located to the west of the site, across the Avenue of the Americas, is a mixed-use area characterized by commercial and office uses, industrial uses, and an increasing number of residential uses; and

WHEREAS, the applicant further observes that the nearby Tribeca Mixed Use District, which begins on the block just south of the Property, acknowledge the mixed residential/industrial character of these neighborhood; and

WHEREAS, the applicant concludes that the proposed building, located at a highly visible location at the intersection of Avenue of the Americas, Grand, Canal and Thompson Streets, will contribute to the vitality of this area and the value of neighboring properties; and

WHEREAS, the applicant also concludes that the proposed residential and retail uses are consistent with the mixed-use character of the area, which includes many other residential uses, some of which occupy the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the character of the area is mixed-use, and finds that neither the introduction of 23 dwelling units nor the introduction of ground floor retail in this area will impact nearby conforming uses nor negatively change the area's character; and

WHEREAS, as to the height and massing, the applicant states that the proposed building would be similar in height to existing loft-style office buildings in the neighborhood; and

WHEREAS, the applicant observes that the building would be shorter than the nearby 17-story SoHo Grand Hotel on the block to the east, the 16-story loft-style office building at 100 Avenue of the Americas on the block to the north, and the 22-story office tower on the west side of Avenue of the Americas between Watts and Grand Streets; in addition, the building would be significantly shorter than the 22-story tower that is planned for construction on the block to the west of the site; and

WHEREAS, the Board also observes that the site is located primarily on the Avenue of the Americas, which is a 100 ft. wide, major north/south corridor, along which there are several large commercial buildings of between 16 and 22 stories, which are higher than the proposed 116' high building; and

WHEREAS, the Board further observes that the west side of the Avenue of the Americas near the premises is zoned M1-6, which allows 10.0 FAR development with no height limit; and

WHEREAS, in response to the Board's concerns about the impact of additional floor area above the 5.0 FAR that the subject district allows for a conforming use, the applicant represented that the proposed building has an FAR that is less than the adjacent 7.0 FAR building, and that is in the midrange

of FARs of other buildings in the surrounding blocks; and

WHEREAS, the applicant notes that the proposed building complies with all of the bulk controls applicable in an R7X zoning district aside from FAR and lot coverage, and fits within the bulk envelope and FAR permitted in a C6-2A zoning district in Hudson Square (the district chosen by the Department of City Planning as the basis for residential rezonings of 5.0 FAR manufacturing zones); and

WHEREAS, the applicant concludes that the building's height and massing provide an appropriate transition between the lower scale of development in SoHo to the east of the site, and the high density development along Avenue of Americans and in Hudson Square to the west; and

WHEREAS, in support of these statements, the applicant has submitted maps illustrating the heights and FARs of surrounding buildings; and

WHEREAS, based upon its review of these maps and its inspection, the Board agrees that the proposed building's height and FAR are consistent with other buildings in the neighborhood; and

WHEREAS, the Board also observes that unlike other sites in the SoHo area along narrow streets in historic districts, the additional FAR above 5.0 is consistent with the surrounding context; and

WHEREAS, accordingly, 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, in addition to the analyses of the conforming scenarios, the applicant also submitted analyses of the following lesser variance scenarios: (1) a hotel scenario, with increased height and density, and an FAR of 6.5; and (2) a six-story residential building, with 20 dwelling units, and an FAR of 5.0; and

WHEREAS, the applicant concluded that neither of these scenarios would realize a reasonable return, due to the significant premium construction costs and the extended construction period; and

WHEREAS, the applicant also provided the Board with analyses of the originally proposed 6.5 FAR residential building, as well as the proposed 5.89 FAR residential building, subsequent to the Board's request to reduce the bulk of the proposed building; and

WHEREAS, the applicant states, and the Board agrees, that the return associated with the 5.89 FAR building represents a reasonable return and the minimum variance; 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 ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05-BSA-133M, dated May 25, 2005; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; 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; 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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-5B zoning district, an eight-story, 116 ft. tall building with retail space on the ground floor and 23 residential units on the upper floors, which is contrary to ZR §§ 42-10 and 42-14(D), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2006"-(17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: eight stories, 23 residential units, a maximum of 116 ft. in total height (without bulkheads), a maximum of 150 ft. in total height (with bulkheads), an 80 ft. street wall, a total FAR of 5.89, a residential FAR of 5.3, and a retail FAR of 0.59;

THAT rooftop obstructions shall be permitted only as per the notes on the BSA-approved plans; however, modification of the rooftop obstructions within these parameters shall not require further Board review;

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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

## 136-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Irving Avenue Holding, LLC, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a two family, two story dwelling which does not comply with the front yard requirement pursuant to Z.R. §23-45 and is less than the required lot width/lot area pursuant to Z.R. §23-32. The premise is located in an R4 zoning district. PREMISES AFFECTED – 1901 Nereid Avenue, corner formed by intersection of the east side of Ely Avenue and North side of Nereid Avenue, Block 5092, Lot 10, Borough of The Bronx.

## COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Deputy Borough Commissioner, dated March 8, 2006, acting on Department of Buildings Application No. 200918784, reads in pertinent part:

"1. Proposed front yard is contrary to Z.R. 23-45;"  
and

WHEREAS, this is an application under Z.R. §72-21, to permit, within an R4 zoning district, the proposed construction of a two-story, two-family home with only one required front yard, contrary to Z.R. § 23-45; and

WHEREAS, a public hearing was held on this application on February 7, 2006 after due notice by publication in *The City Record*, and laid over to March 14, 2006 and then to decision on April 4, 2006; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application based on concerns about blockage of the next door neighbor's windows, parking impacts, as well as concern that a two-family residence is not in character with the block; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by a committee of the Board, including Chair Srinivasan and Commissioner Collins; and

WHEREAS, the site is located at the northeast corner of Ely Avenue and Nereid Avenue; and

WHEREAS, the site is 23.75 ft. in width, with a total lot area of 2,137.5 sq. ft.; and

WHEREAS, the site is currently vacant and the applicant states that the lot has existed in its present configuration as a vacant lot prior to 1961; and

WHEREAS, the applicant proposes to construct a two-

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story, two-family home, with two parking spaces located at the rear; and

WHEREAS, the proposed home will have a total residential floor area of 1,921.86 sq. ft. (1,923.75 sq. ft. is the maximum permitted); a total residential FAR of 0.75 (0.75 is the maximum permitted); one front yard of 12.5 ft. in depth (two 10 ft. front yards are required for a corner lot in an R4 zoning district); and side yards of 5 ft. and 26 ft. 5 inches (two side yards of 5 ft. are the minimum required); and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is a pre-existing 23.75 ft. wide vacant corner lot that can not accommodate as of right development; and

WHEREAS, as to uniqueness, the applicant notes that while there are several lots within a 400 ft. radius with similar narrow widths, all are developed with homes, and that this is one of only two vacant sites within the radius; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, the Board observes that if the applicant were to provide the second front yard of 10 ft. in width, in conjunction with the required side yard of five ft. for a corner lot, the result would be a home of 8.75 ft. in width; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

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

WHEREAS, in response to the next door neighbor's testimony about the impact on light and air, the Board notes that the proposed plan provides for a complying side yard of 5 ft.; and

WHEREAS, the Board further notes the result of the waiver is that the building is aligned along the property line along Ely Street; and

WHEREAS, while the remaining portion of Ely Street has buildings that have front yards, given that the proposal is at the intersection, the impact of the waiver would not change the essential character of the neighborhood; and

WHEREAS, the Board observes that, a complying front yard is provided, along Nereid Avenue, that would be consistent with the character of the street; and

WHEREAS, in response to the Community Board concerns that a two-family home is out-of-character with the area, the applicant provided the Board with a land use map identifying two-family homes within a 400 ft. radius of the site; and

WHEREAS, the Board has reviewed this map and agrees that a significant number of homes within a 400 ft. radius, and

more than half of the homes on Nereid Avenue, are two-family homes; and

WHEREAS, in response to the concerns raised regarding parking, the Board notes that the proposal would accommodate two parking spaces on the site, as per the zoning requirement; and

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

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

WHEREAS, during the course of the hearings, the applicant was asked to examine two lesser variance proposals, both of which provided a front yard of 3 ft. along Ely Street; and

WHEREAS, the two proposals were: (1) a single-family home and (2) a two-family home; and

WHEREAS, for both alternatives, the applicant showed that the narrower building compromised the size of the bedrooms and that the two-family proposal made the development economically feasible; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under Z.R. §72-21, to permit, within an R4 zoning district, the proposed construction of a two-story, two-family home with only one required front yard, contrary to Z.R. §23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 29, 2005"- (4) sheets and "March 21, 2006"-(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.75; a floor area of 1,921.86 sq. ft.; one side yard of 5'-0"; one side yard of 26'-5"; and one front yard of 12'-6";

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

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

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

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

Adopted by the Board of Standards and Appeals, April 4, 2006.

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**194-05-BZ**

APPLICANT – David L. Businelli, for Steven Morris, owner.

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SUBJECT – Application August 16, 2005 – Under Z.R. §72-21 – Extending the term of variance which expired on November 6, 1997 to permit in an R3-X the continued use of a one story building for retail sales with accessory parking. (Jurisdictional §72-21).

PREMISES AFFECTED – 5525 Amboy Road, North side 442.44’ West of Huguenot Avenue, Block 6815, Lot 85, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: David Businelli.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 11, 2005, acting on DOB Application No. 500621348 reads, in pertinent part:

“As per section 22-00, use group 6 is not permitted as-of-right.”; and

WHEREAS, this is an application under Z.R. §72-21, to permit, in an R3-X zoning district, the use of office space (UG 6) in place of the previously granted retail use (UG 6), contrary to Z.R. §22-00; and

WHEREAS, the term for the original variance, granted under BSA Cal. No. 384-81-BZ, permitting the development of the building for retail use expired on November 9, 1997, and this application is to re-establish the grant and change the type of Use Group 6 use; and

WHEREAS, a public hearing was held on this application on March 14, 2006, after due notice by publication in *The City Record*, and then to decision on April 4, 2006; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application on the condition that hours of operation cease at 11 P.M.; and

WHEREAS, the subject zoning lot is located on the north side of Amboy Road, west of Huguenot Avenue, and has a lot area of 35,123 sq. ft.; and

WHEREAS, the site is occupied by a one-story building with 5,000 sq. ft. of floor area and 17 unenclosed parking spaces; and

WHEREAS, the applicant represents that the proposed office use will occupy the entire building; and

WHEREAS, the site is located at the intersection of Amboy Road and the Staten Island Rapid Transit Operating Authority (SIRTOA) railroad tracks; and

WHEREAS, the applicant represents that the site is irregularly shaped, and abuts the SIRTOA tracks; and

WHEREAS, further, the applicant represents that there is a 9,976 sq. ft. street widening easement running through 80 percent of the site’s frontage and that the rear 30 ft. wide portion

of the site must remain vacant and undeveloped per SIRTOA requirements; and

WHEREAS, the applicant states, and the Board’s prior resolution indicates, that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the lot is irregularly-shaped; (2) it abuts the SIRTOA railroad tracks; (3) the land has an unusual contour and an approximate 20 ft. grade differential; (4) there is an adopted street widening on Amboy Road that requires a buffer of 35 ft. on average; and (5) the requirements of the Department of Health preclude residential development of more than four dwelling units; and

WHEREAS, the applicant represents that because of the site’s location at the intersection with the railroad, it is difficult to attract retail customers; and

WHEREAS, in addition, the applicant represents that noise emanating from the surrounding train lines discourages conforming residential use; and

WHEREAS, the Board finds that, when considered in the aggregate, the factors stated above create unnecessary hardship and practical difficulties in strictly conforming with the applicable use provisions of the Zoning Resolution; and

WHEREAS, the Board also agrees that the site’s proximity to the railroad tracks impacts the viability of the existing Board-approved retail use; and

WHEREAS, the applicant submitted a feasibility study that analyzed the following scenarios: maintaining the existing commercial use; an as-of-right residential use; and the proposed use; and

WHEREAS, the feasibility analysis concludes that the as-of-right residential use and the existing use will not garner a reasonable rate of return; and

WHEREAS, therefore, the Board has determined that because of the subject lot’s unique physical conditions there is no reasonable possibility that an as-of-right use or continuing the existing retail use would provide a reasonable return; and

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

WHEREAS, the applicant represents that the immediate area consists almost entirely of commercial and community facility uses; and

WHEREAS, the applicant also submitted a land use map that reflects that the site is bordered by a vacant lot and the SIRTOA railroad tracks, and that there are no residential uses adjacent to it; and

WHEREAS, the applicant notes that the 17 off-street parking spaces accommodate the parking requirement for Use Group 6 office use in an equivalent commercial district; and

WHEREAS, the Board notes that the proposed hours of operation of 9 A.M. to 6 P.M., Monday through Saturday, satisfies the Community Board’s concern; and

WHEREAS, the Board also notes that the change to office use from retail would likely reduce the activity and

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traffic at the site, with minimal use on weekends; and

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

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

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

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

WHEREAS, the project is classified as an Unlisted 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. 06BSA053R, dated March 8, 2006; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.4, 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, in an R3-X zoning district, the use of office space (UG 6) in place of the previously granted retail use (UG 6), contrary to Z.R. §22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 3, 2006"-(1) sheet; and *on further condition*:

THAT the hours of operation shall be from 9 A.M. to 6 P.M., Monday through Saturday;

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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 4, 2006.

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## **146-04-BZ**

APPLICANT – Joseph Margolis for Jon Wong, Owner.

SUBJECT – Application April 5, 2006 – Pursuant to Z.R. §72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 1:30 P.M., for continued hearing.

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## **274-04-BZ**

APPLICANT – Harold Weinberg, P.E., for Dr. Elena Starosta, owner.

SUBJECT – Application August 6, 2004 – Under Z.R. §72-21 Variance under Section 72-21, in an R4 district and on a lot consists of 2,470 SF, permission sought to legalize the extension of a medical use to the second floor on an existing building consisting of two-stories. The use is contrary to side yard requirements.

PREMISES AFFECTED – 2114 Gravesend Neck Road, south side, 63'-7½" south of East 22nd Street, Block 7381, Lot 101, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

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## **320-04-BZ**

APPLICANT – Harold Weinberg, P.E., for Michael Reznikov, owner.

SUBJECT – Application September 20, 2004 – Proposed legalization of a Special Permit Z.R. §73-622 for a two-story and rear enlargement, to an existing one family dwelling, Use Group 1, located in an R3-1 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yard, is contrary to Z.R. §23-

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141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side, 220'-0" south of Oriental Boulevard, Block 8741, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

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**5-05-BZ**

APPLICANT – Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – Under Z.R. 73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59<sup>th</sup> Avenue, Block 6887, Lot 24, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Irving Minkin.

For Opposition: Mary Halikiopoulous.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 16, 2006, at 1:30 P.M., for decision, hearing closed.

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**47-05-BZ**

APPLICANT – Fischbein Badillo Wagner Harding, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – Under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90<sup>th</sup> Street, Block 1586, Lot 10, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

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**100-05-BZ**

APPLICANT – Martyn & Don Weston, for 223 Water Street, LLC, owner.

SUBJECT – Application April 25, 2005 – Under Z.R. §72-21 to permit the proposed conversion of the second and third floors, of a six story manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED – 223 Water Street, a/k/a 48 Bridge Street, northwest corner, Block 31, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Don Weston, Jack Guttman and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

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**289-05-BZ**

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, owner.

SUBJECT – Application September 19, 2005 – Under Z.R. §73-50 – to waive Z.R. §33-292 – waiving the require 30 foot open area at the rear of premises.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly and Clarendon Roads, Block 4760, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

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**339-05-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Devtsch and Russ.

For Opposition: Howard B. Weber, Mark Schilps and Arlene Reiman.

**ACTION OF THE BOARD** – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

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# MINUTES

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**340-05-BZ**

APPLICANT – The Law office of Fredrick A. Becker, for Chelsea Eighth L.P., owner; TSI West 16<sup>th</sup> Street dba New York Sports Club, lessee.

SUBJECT – Application November 29, 2005 – Variance under Z.R. §72-21. In C1-6A, C6-2A, R8B districts, permission sought to legalize a physical culture establishment (PCE), located in the portions of the cellar and first floor of an existing 22-story mixed-use building. The proposed use is contrary to district use regulations.

PREMISES AFFECTED – 270 West 17<sup>th</sup> Street, a/k/a 124-128 Eighth Avenue, easterly sided of Eighth Avenue between 17<sup>th</sup> Street and West 16<sup>th</sup> Streets, Block 766, Lots 1101, 1102, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 2, 2006, at 1:30 P.M., for decision, hearing closed.

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**349-05-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC, for Church of the Resurrection, owner.

SUBJECT – Application December 8, 2005 – Zoning Variance (bulk) pursuant to Z.R. §72-21 – to allow a proposed eight (8) story residential building with community facility use on the 1<sup>st</sup> and 2<sup>nd</sup> floors in an R7A Zoning District; contrary to Z.R. §23-145.

PREMISES AFFECTED – 325 East 101<sup>st</sup> Street, between First and Second Avenues, Block 1673, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #11M**

APPEARANCES –

For Applicant: Chris Wright.

**ACTION OF THE BOARD** – Laid over to June 6, 2006, at 1:30 P.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director.*

Adjourned: 5:00 P.M.