
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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July 27, 2006

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153-06-A

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154-06-A

357 15th Street, North side of 15th, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of **Brooklyn**, **Community Board: 6**. Appeal - To allow completion of major development commenced prior to enactment of zoning map amendment.

155-06-A

357 15th Street, North side of 15th, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of **Brooklyn**, **Community Board: 6**. Appeal - To allow completion of major development commenced prior to enactment of zoning map amendment.

156-06-BZ

267-04 83rd Avenue, South east corner of 267th Street, Block 8779, Lot 41, Borough of **Queens**, **Community Board: 13**. Under Z.R. §72-21 - To legalize portion of second floor encroaching into one of front yards.

157-06-BZ

28-56 Steinway, North west corner of Steinway Street and 30th Avenue., Block 662, Lot 41, Borough of **Queens**, **Community Board: 1**. Special permit - To legalize an enlargement to a previously approved physical culture establishment on the first and second floor of an existing three story commercial building.

158-06-BZ

1410 East 22nd Street, West side of East 22nd Street 380' south of Avenue M., Block 7677, Lot 66, Borough of **Brooklyn**, **Community Board: 14**. Special Permit: under Z.R. §73-622 - Extension of Time.

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

AUGUST 22, 2006, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday morning*, August 22, 2006, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

308-64-BZ

APPLICANT – Sheldon Lobel, P.C., for 30 East 65th Street Corporation, owner.

SUBJECT – Application June 2, 2006 - Application is a reopening for an Extension of Term/Waiver of a variance for the use of 15 surplus attended transient parking spaces within a multiple dwelling presently located in a C5-1/R8/MP zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED - 747-751 Madison Avenue, a/k/a 30-38 East 65th Street, Northeast corner of East 65th Street, Block 1379, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

670-83-BZ

APPLICANT – Eric Palatnik, P.C., for Brett Adams and Paul Reisch, owner.

SUBJECT – Application July 10, 2006 - Pursuant to ZR 72-01 & 72-22 to Re-open and Amend the previous BSA resolution for the Extension of Term for a non-conforming UG6 (Talent Agency in the basement of a Residential Building for ten years which expired on May 22, 2005. The application is also seeking a Waiver of the Rules of Practice and Procedure for filing more than a year after the expiration of the term.

The premise is located in an R8 (Special Clinton District) zoning district.

PREMISES AFFECTED – 488 West 44th Street, Between 9th and 10th Avenues, Block 1053, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

331-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Sean Porter, owner.

SUBJECT – Application April 20, 2006 - Application seeks an extension of term for a special permit under section 73-244 of the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.

PREMISES AFFECTED – 1426-1428 Fulton Street,

Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

149-01-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for Jane Street Realty, LLC, owner.

SUBJECT - Application June 19, 2006 - This application is to Reopen and Extend the Time to Complete Construction for the inclusion of the first and cellar floor areas of an existing six-story building for residential use and to obtain a Certificate of Occupancy which expired on June 18, 2006. The premise is located in an R6 zoning district.

PREMISES AFFECTED – 88-90 Jane Street, North side of West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

332-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 - Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35 . Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 72 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island

COMMUNITY BOARD #2SI

333-05-A

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.

SUBJECT – Application November 17, 2005 - Application to permit the construction of two one family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35 . Premises is located in an R4 Zoning district.

PREMISES AFFECTED – 74 Summit Avenue, Block 951, Lot p/o 19 (tent 25 & 27), Borough of Staten Island

COMMUNITY BOARD #2SI

346-05-A

APPLICANT – Joseph A. Sherry, for Abdo Alkaifi, owner.

SUBJECT – Application December 6, 2005 - Application to

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permit an enlargement of a commercial structure located partially in the bed of a mapped street (Beach 52nd Street) contrary to Section 35 of the General City Law . Premises is located within the C8-1 Zoning district.

PREMISES AFFECTED - 51-17 Rockaway Beach Boulevard, S/S 0' East of Beach 52nd Street, Block 15857, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

57-06-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa, owner.

SUBJECT – Application March 27, 2006 - Proposal to construct a two story commercial building not fronting on a mapped street contrary to Genral City Law Section 36. Premises is located within an M1-1 Zoning District.

PREMISES AFFECTED - 141,143,145,147 Storer Avenue, South of Storer Avenue, 101.57' west of the corner of Carlin Street & Storer Avenue, Block 7311, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #3SI

AUGUST 22, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, *Tuesday afternoon*, August 22, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

288-05-BZ

APPLICANT – Harold Weinberg, P.E., for Maria Musacchio, owner.

SUBJECT – Application September 16, 2005 – Pursuant to ZR §73-622 Special Permit for an In-Part Legalization to a single family home which exceeds the allowable floor area ratio and is less than the allowable open space, 23-141 and exceeds the maximum allowable permieter wall height, 23-631. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 1060 82nd Street, South side, 197'3" west of 11th Avenue, between 10th Avenue, Block 6012, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #10BK

336-05-BZ

APPLICANT – Stuart A. Klein, Esq., for Rotunda Realty Corporation, owner; CPM Enterprises, LLC, lessee.

SUBJECT – Application November 23, 2005 – Special

permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

PREMISES AFFECTED – 495 Broadway, a/k/a 66-68 Mercer Street, west side of Broadway between Spring and Broome Streets, Block 484, Lot 24, Borough of Manhattan
COMMUNITY BOARD #2M

56-06-BZ

APPLICANT - The Law Office of Fredrick A. Becker, for Suri Blatt and Steven Blatt, owner.

SUBJECT – Application March 27, 2006 - Pursuant to ZR 73-622 Special Permit for the enlargement of an existing one family residence which exceeds the maximum allowed floor area and decreases the minimum allowed open space as per ZR 23-141 and has less than the minimum required rear yard as per ZR 23-47.

PREMISES AFFECTED – 1060 East 24th Street, East 24th Street between Avenue J and Avenue K, Block 7606, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

72-06-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for SL Green Realty Corporation, owner; Equinox One Park Avenue, Incorporated, lessee.

SUBJECT – Application April 19, 2006 - Special Permit pursuant to Z.R.73-36 to allow the proposed PCE within a portion of the first floor and the entire second floor of the existing 18-story commercial building. The premise is located in a C5-3 and C6-1 zoning district. The proposal is contrary to Z.R. Section 32-10.

PREMISES AFFECTED – 1 Park Avenue, a/k/a 101/17 East 32nd Street and East 33rd Street, East south of Park Avenue between E. 32nd Street and East 33rd Street, Block 888, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

94-06-BZ

APPLICANT – Dennis D. Dell'Angelo, for David & Rosa Soibelman, owner.

SUBJECT – Application May 12, 2006 - Pursuant to ZR 73-622 - Special Permit to construct a three story enlargement to an existing single family home creating non-complying conditions contrary to ZR 23-141 for open space and floor area ratio, ZR 23-47 less than the required rear yard and ZR 23-48 for less than the required side yards. The premise is located in an R-2 zoning district.

PREMISES AFFECTED - 1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

113-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.

SUBJECT – Application June 6, 2006 - Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. sections 24-11 and 24-522.

PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeffrey Mulligan, Executive Director.

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**REGULAR MEETING
TUESDAY MORNING, JULY 18, 2006
10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, May 2, 2006 as printed in the bulletin of May 11, 200, Volume 91, No. 19. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

364-36-BZ, Vol. II

APPLICANT – Joseph P. Morsellino, for Dominick Tricarico & Est. of P. Tricarico, owner.

SUBJECT – Application July 13, 2005 – Extension of Term/Waiver of a Variance which expired on February 11, 2005 for an additional 15 year term of an automotive service station. The premise is located in a C1-4 and R6B zoning district.

PREMISES AFFECTED – 31-70 31st Street, 31st Street and Broadway, Block 589, Lot 67, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of the Standards and Appeals, July 18, 2006.

374-71-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Evelyn DiBenedetto, owner; Star Toyota, lessee.

SUBJECT – Application February 12, 2004 – Pursuant to Z.R. §§72-01 and 72-22 for an extension of term of a variance permitting an automobile showroom with open display of new and used cars (UG16) in a C2-2 (R3-2) district. The application also seeks an amendment to permit accessory customer and employee parking in the previously unused vacant portion of the premises.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 6269, Lots 14 and 20, located on the North West corner of Northern Boulevard and the Clearview Expressway, Borough of Queens.

COMMUNITY BOARD#11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and a (1) amendment to a previously granted variance which permitted an automobile show room with open display of new and used cars; (2) the restoration of a previously approved accessory parking lot; and (3) an extension of term of the grant which expired on February 15, 2002; and

WHEREAS, a public hearing was held on this application on January 31, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 25, 2006, May 16, 2006 and June 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, Community Board 11, Queens, recommends approval of this application on condition that a wrought iron fence be installed along the front of the site and that a maximum of 15 vehicles be allowed to be parked on the area currently used for the open display of new and used vehicles in front of the building; and

WHEREAS, City Council Member Tony Avella recommends approval with a limitation on the term for two years; and

WHEREAS, the Auburndale Improvement Association suggested the following conditions: that a permanent wrought iron fence be installed to protect the sidewalk and that there be a 15 vehicle maximum on the display lot; and

WHEREAS, certain community members appeared in opposition, citing concerns about the storage and washing of cars on the sidewalk, lack of compliance with curb cut conditions, and the need for a fence rather than bollards along the perimeter of the property; and

WHEREAS, the premises is located at the northwest corner of the intersection of Northern Boulevard and the Clearview Expressway, with additional frontage on 205th Street; and

WHEREAS, the site is a 9,870 sq. ft. lot located within an C2-2 (R3-2) zoning district and is improved upon with an automobile showroom, operating as Star Toyota, with open display of new and used cars, and a 4,969 sq. ft. accessory parking lot; and

WHEREAS, specifically, the showroom and display area front on Northern Boulevard and the accessory parking lot is at the rear, within the R3-2 zoning district, fronting on the Clearview Expressway; and

WHEREAS, the existing conditions at the site include one curb cut on the 205th Street frontage, three curb cuts on the Northern Boulevard frontage, and two curb cuts on the Clearview Expressway frontage; and

WHEREAS, the accessory parking lot and the sides of the showroom and display area are enclosed with chain link fence; the front of the site is demarcated with removable bollards; and

WHEREAS, the Board has exercised jurisdiction over the

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subject site since July 15, 1975 when, under the subject calendar, the Board granted an application to permit the discontinuance of an automotive service station and the change in use to the sales and display of new and used cars, in addition to the parking and storage of cars and accessory parking on the vacant portion of the lot; and

WHEREAS, subsequently, the grant was extended and amended several times, including on November 17, 1982, when the term was extended for five years and the accessory parking lot was to be discontinued; and

WHEREAS, most recently, on December 7, 1993, the Board granted an extension of term to expire on February 15, 2002; and

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

WHEREAS, in response to the community's concern about parking on neighboring residential streets, the applicant requests an amendment to restore the previously-approved accessory parking use, to be limited to employee and customer parking in the accessory parking lot; and

WHEREAS, at hearing, the Board expressed concern about the following general site conditions: (1) the number of cars that could be feasibly parked in the display lot, and (2) the use and safety of the sidewalk; and

WHEREAS, at hearing, the Board asked the applicant how many cars would actually be parked within the display area lot; and

WHEREAS, initially, the applicant said that approximately 30 cars would be parked on that portion of the lot; and

WHEREAS, the Board requested that the applicant reduce the number of spaces because the lot could not support the display of so many vehicles; and

WHEREAS, the applicant responded that due to there being 21 models of Toyota automobiles, it is necessary to display a minimum of 26 cars; and

WHEREAS, subsequently, the applicant revised the plans to the current version which allocates spaces for 22 cars on the display lot; and

WHEREAS, the Board has reviewed and is satisfied with the revised layout, since the size of the display area can accommodate this amount of vehicles; and

WHEREAS, as to the second issue, the Board asked the applicant what measures had been taken to eliminate the prior improper use of the sidewalk for automobile sales and washing and to maintain safe traffic conditions on the site; and

WHEREAS, the applicant represents that, since the lot was repaved, sales of vehicles has not occurred on the sidewalk and the sidewalk is not used for washing cars; and

WHEREAS, the Board expressed concern that the bollards, which can be lowered, do not provide enough of a barrier between the display area and the sidewalk and asked the applicant whether they could be replaced with a fence; and

WHEREAS, the Board suggested that a fence would help provide a more clearly defined entrance and exit path and confine the movement of cars to a smaller area; and

WHEREAS, additionally, the Board suggested that a fence at the 205th Street and Clearview Expressway sides of the site would eliminate direct access onto the residential streets and restrict vehicular ingress and egress to the Northern Boulevard frontage; and

WHEREAS, in response, the applicant noted that the removable bollard system requires that, at most, one vehicle would have to be moved to let another out and that a fencing system around the entire site would require more vehicles to be moved, leading to increased traffic and vehicle parking on the street; and

WHEREAS, further, the applicant responded that the bollards were necessary to provide visibility and better customer access to the cars; and

WHEREAS, the Board suggested that, in lieu of a fence at the Northern Boulevard frontage, some bollards should be fixed in place and should be taller than those initially proposed; and

WHEREAS, at the Board's suggestion, the applicant agreed to install bollards that are three feet tall; and

WHEREAS, the Board also expressed concern that the site's six curb cuts are excessive and contribute to the noted sidewalk safety and traffic problems; and

WHEREAS, the Board suggested that the applicant remove the curb cut on 205th Street and the second curb cut on the Clearview Expressway so that all access, other than to the accessory lot, would be from Northern Boulevard; and

WHEREAS, the applicant agreed to remove the curb cuts from 205th Street and the southernmost one on the Clearview Expressway and to provide three-ft. tall wrought iron fencing at these points; and

WHEREAS, the Board also expressed the following concerns about the accessory parking lot: (1) the number of parking spaces, (2) screening and lighting, and (3) the use and hours of operation; and

WHEREAS, as to the accessory parking lot, the Board asked the applicant how many parking spaces would be allocated to the lot; and

WHEREAS, the applicant responded that there would be a maximum of 16 parking spaces on the lot, based on the accepted 300 sq. ft. per space standard; and

WHEREAS, the Board asked the applicant to ensure that the lot would be properly screened from the adjacent residences and that any lighting would be directed away from them; and

WHEREAS, the applicant responded that there would be a 4'-0" opaque fence on top of a 2'-0" retaining wall along the north and west sides of the lot and a 6'-0" tall chain link fence with a single gate at the Clearview Expressway side of the lot; and

WHEREAS, additionally, to address neighbors' concerns about the presence of two dumpsters at the site, the applicant represents that there will now be one dumpster and it will be in the back of the building; and

WHEREAS, the Board inquired about the operation of the accessory lot in relationship to the rest of the site; and

WHEREAS, the applicant responded that the use would be very limited and would be reserved to employees and

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customers; and

WHEREAS, further, the applicant stated that the gate to this lot would be closed and locked after business hours; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on July 15, 1975, as subsequently extended, so that as amended this portion of the resolution shall read: "to permit the restoration of the previously-approved accessory parking use, to be limited to employee and customer parking, and to extend the term for an additional period of five years from the date of this grant, to expire on July 18, 2011, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received July 6, 2006'-(1) sheet; and *on further condition*:

THAT the term of this grant shall be for five years, to expire on July 18, 2011;

THAT a maximum of 22 automobiles shall be parked within the sale and display lot;

THAT a maximum of 16 automobiles shall be parked within the accessory parking lot;

THAT the use of the accessory parking lot shall be limited to employees and customers;

THAT the accessory parking lot shall be locked and empty during non-business hours;

THAT all exterior lighting shall be directed away from residences;

THAT 3'-0" tall bollards shall be installed and maintained along the Northern Boulevard frontage of the site as illustrated on the BSA-approved plans;

THAT a 3'-0" tall wrought iron fence shall be installed and maintained along the two corners of the site as illustrated on the BSA-approved plans;

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

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

THAT DOB shall review and approve the layout of the onsite parking;

THAT prior to the issuance of any building permits, the applicant shall submit to DOB a survey which indicates the property lines;

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

(DOB Application No. 401815620)

Adopted by the Board of Standards and Appeals, July 18,

2006.

169-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZKZ Associates, LP, owner; TSI West 80 Inc., dba New York Sports Club, lessee.

SUBJECT – Application October 21, 2005 – Pursuant to ZR §73-36 for the Extension of Term for a Physical Culture Establishment (New York Sports Club) which expired on May 17, 2004.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on May 17, 2004; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject premises is located at the southwest corner of West 80th Street and Broadway; and

WHEREAS, the site is occupied by two adjoining five-story commercial buildings; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, on May 17, 1994, the Board granted a special permit pursuant to ZR § 73-36, to permit, in a C4-6A zoning district, the operation of a PCE in the cellar through fifth floors of the building at 248 West 80th Street, and the second floor of the building at 246 West 80th Street; and

WHEREAS, subsequently, the grant was re-opened and amended to allow for an expansion, a modification of the hours of operation, and an extension of the term; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; and

WHEREAS, accordingly, the Board finds that a ten-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated May 17, 1994, so that

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as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received July 14, 2006"–(8) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten years from May 17, 2004, expiring May 17, 2014;

THAT the hours of operation shall be Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 8:00 a.m. to 10:00 p.m.;

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

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

THAT 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, July 18, 2006.

227-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for 41st Street Realty, LLC, owner; Gem Foods of Brooklyn, lessee.

SUBJECT – Application July 19, 2005 – Extension of term of a Special Permit for an eating and drinking establishment with an accessory drive-through facility. The premise is located in a C1-3(R-6) zoning district.

PREMISES AFFECTED – 41-01 4th Avenue, aka 400 41st Street, southeast corner of 4th Avenue and 41st Street, Block 719, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of the special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on May 18, 2004; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

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

WHEREAS, the site is located on the northwest corner of Fourth Avenue and 41st Street, within a C1-3(R6) zoning district, has a lot area of 10,000 sq. ft., and is occupied by an existing eating and drinking establishment (a Burger King fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and 13 accessory parking spaces; and

WHEREAS, on May 18, 1999, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the restaurant, for a period of five years; and

WHEREAS, the applicant requests a ten-year extension of term; and

WHEREAS, in its application, the applicant also identified differences between the parking and traffic circulation as shown on the BSA-approved plans and those that are actually in existence at the site; and

WHEREAS, the applicant attributed these deviations to operational problems that arose after the original construction; and

WHEREAS, specifically, the applicant noted the following deviations: the removal of a curb at the drive-through lane, a decrease in the parking aisle width from 24'-0" to 22'-0", and the increase in the width of the drive-through lane from 9'-2" to 11'-2"; and

WHEREAS, at hearing, the applicant agreed to return the traffic circulation conditions to what was approved by the Board, except that the curb would not be replaced; and

WHEREAS, the Board observed that the removal of the curb improved the safety of the traffic circulation pattern; and

WHEREAS, accordingly, the applicant submitted revised drawings that reflect the increase in the parking aisle width to 24'-0", the reduction in the width of the drive-through lane to 9'-2", and the removal of the curb; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is appropriate, so long as the restaurant complies with all relevant conditions as set forth below.

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 18, 1999, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from May 18, 2004, *on condition* that all work and site conditions shall comply with drawings marked "Received May 16, 2006"–(2) sheets, and "Received July 6, 2006" –(1) sheet ; and *on further condition*:

THAT the term of this grant shall expire on May 18, 2009;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior

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approval of the Board;

THAT the hours of operation of the drive-through shall be limited to 7:00 a.m. to 12:00 a.m., daily;

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

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

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

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

THAT the 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 App. No. 300717552)

Adopted by the Board of Standards and Appeals, July 18, 2006.

121-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Harbor Associates, owner.

SUBJECT – Application November 2, 2005 – Pursuant to ZR 73-11 for the proposed Extension of Term of Special Permit and Extension of Time to obtain a Certificate of Occupancy for a Physical culture Establishment (Harbor Fitness Club) which expired on January 1, 2006 is contrary to ZR32-10.

PREMISES AFFECTED – 9215 4th Avenue, a/k/a 9216 5th Avenue, south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a previously issued special permit term for the prior grant for a physical culture center (PCE), which expired on January 1, 2006 and an extension of time to obtain a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, and then to decision on July 18, 2006; and

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

WHEREAS, the subject 13,855 sq. ft. lot fronts both Fourth and Fifth Avenues and is located south of the intersection

with 92nd Street; and

WHEREAS, the site is located within a C8-2 (BR) zoning district and is improved upon with a two-story with mezzanine and cellar building occupied by a PCE; and

WHEREAS, the PCE is operated as a Harbor Fitness Club; and

WHEREAS, the Board has exercised jurisdiction over both the subject premises since November 26, 2002, when the Board granted an application to permit the legalization of a PCE and the completion of additional required work, including improvements related to a compliance with Local Law 58/87 and the installation of fire safety equipment; and

WHEREAS, the applicant notes that since the prior grant, the site has been re-zoned from C8-1 (BR) to C8-2 (BR), but that this re-zoning does not impact the grant or the subject application; and

WHEREAS, in June 2004, the owner received a violation from the Fire Department for failing to complete the required work; and

WHEREAS, the applicant represents that the required work was completed in the summer of 2005, but that a new certificate of occupancy was not obtained prior to the January 1, 2006 expiration of the grant; and

WHEREAS, the applicant now seeks an extension of term of the special permit for ten years and an extension of time for six months from the date of this grant to obtain a new certificate of occupancy; and

WHEREAS, the Board notes that the Fire Department has approved the fire safety equipment and that there are no changes to the approved plans; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of term and extension of time to obtain a certificate of occupancy.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on November 26, 2002, under the subject calendar number, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on January 1, 2016, and an extension of time to obtain a certificate of occupancy for an additional period of one year from the prior grant’s expiration, to expire on January 1, 2007, *on condition*: that all work and site conditions shall comply with drawings marked “Received July 6, 2006”–(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 1, 2016;

THAT a new certificate of occupancy shall be obtained by January 1, 2007;

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

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

THAT 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

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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. 301295140)

Adopted by the Board of Standards and Appeals, July 18, 2006.

413-50-BZ, Vol. II

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.

PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

405-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.

SUBJECT – Application April 21, 2006 – Pursuant to ZR §73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).

PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Richard Lobel and Mark Pilata.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

286-79-BZ

APPLICANT – Walter T. Gorman, P.E., for Amerada Hess Corp., owner.

SUBJECT – Application April 13, 2006 – Proposed Extension of Term for an automobile service station located

in a C1-2/R2 zoning district. The application also seeks to waive the Board's rules of practice and procedure and extend the term of the special permit for a period of ten (10) years which expired on June 19, 2004 and extend it to June 19, 2014.

PREMISES AFFECTED – 219-28 to 219-38 Hillside Avenue, southeast corner of Springfield Boulevard, Block 10680, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

183-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005. PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for continued hearing.

269-98-BZ

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APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application April 12, 2006 – Pursuant to ZR §72-01 for the Extension of Time to Complete Construction and to obtain a Certificate of Occupancy for the construction of a two story building for commercial use (Retail UG6) in a residential use district.

PREMISES AFFECTED – 70 East 184th Street, aka 2363 Morris Avenue, south side of East 184th Street, corner formed by the intersection of Morris Avenue, Block 3183, Lot 42, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Mothiur Rahman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy’s Restaurant, lessee.

SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy’s) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik and James Shephard.

For Opposition: Esme Trotman and Maria Shake.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

182-04-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Chelsea Village Associates, owner; Harmic III, LLC, lessee.

SUBJECT – Application January 17, 2006 – Reopening for an amendment permit proposed eating and drinking establishment (comedy theater), Use Group 12, on a zoning lot, split between a C6-2A and R8B zoning district, of which a portion is located in the R8B district, is contrary to Z.R. §22-10.

PREMISES AFFECTED – 351/53 West 14th Street, north side, between Eighth and Ninth Avenues, Block 738, Lot 8,

Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Steve Sinacori.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

263-03-A

APPLICANT – John W. Carroll, Wolfson & Carroll, for Ben Bobker, owner.

SUBJECT – Application August 20, 2003 – An administrative appeal challenging the Department of Buildings’ final determination dated August 13, 2003, in which the Department refused to revoke the certificate of occupancy, on the basis that the applicant had satisfied all objections regarding said premises.

PREMISES AFFECTED – 1638 Eighth Avenue, west side, 110-5’ east of Prospect Avenue, Block 1112, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: John Carroll.

ACTION OF THE BOARD – Appeal dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal which, when filed on August 20, 2003, challenged a Department of Buildings determination dated August 13, 2003, refusing to revoke a building permit issued under DOB Application No. 301172184 on July 21, 2003 (the “Permit”); and

WHEREAS, a public hearing was held on this appeal on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006 and June, 20, 2006, and then to decision on July 18, 2006; and

WHEREAS, the applicant states that the subject premises fronts on the south side of 15th Street between Seventh and Eighth Avenues, on a 7,656 sq. ft. site, with frontage of approximately 75 ft. and a depth of 100 ft.; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two-story residential building with a cellar and basement; and

WHEREAS, as to the history of work at the site, demolition activities were authorized from under Demolition Permit No. 301321399 on April 17, 2002, through February 11, 2003; and

WHEREAS, the Permit, which authorized excavation and construction, was in effect during an initial term of June 11, 2002 through August 13, 2002, and was renewed by DOB for eight other discrete terms; and

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WHEREAS, DOB notes that since these terms were not all consecutive or overlapping, there were periods of time between expiration and renewal during which the Permit was not in effect; and

WHEREAS, shoring work, including the reinforcement and stabilization of the excavated area, was authorized for an initial term of April 22, 2004 through February 11, 2005 and for a renewal term of February 16, 2005 through February 11, 2006, under Alteration Type II Permit No. 301799105; and

WHEREAS, appellant initially challenged DOB's issuance of the Permit, asserting that the approved plans violated the following zoning and Building Code ("BC") provisions: (1) ZR § 23-63(e) - building height; (2) ZR § 23-462 - side yard; (3) BC § 27-662 - soil investigation; (4) ZR § 12-10 ("cellar"); and (5) BC §§ 27-901(k) and 27-1029 - disposal of storm water and prevention of damage due to changes in ground water level; and

WHEREAS, subsequent to the filing of the appeal, DOB issued objections related to the Permit, apparently agreeing that some of appellant's concerns had merit; and

WHEREAS, specifically, on March 17, 2004, DOB issued a letter of intent to revoke the Permit based on concerns that the application did not comply with: (1) prescribed building height per ZR § 23-631(e) and ZR § 12-10 ("base plane"); (2) disposal of storm water and investigation of damage to adjacent buildings caused by changes in ground water level per BC §§ 27-901(k) and 27-1029, respectively; and (3) required "adequate adjacent space" outside basement apartments per Multiple Dwelling Law § 34(6); and

WHEREAS, the revocation of the Permit was never executed as the cited concerns were resolved by the developer, through the submission of revised plans, at DOB; and

WHEREAS, the developer was successful, and none of the issues originally raised in the initial appeal papers are unresolved, a fact conceded by appellant; and

WHEREAS, however, appellant continued to raise new issues during the hearing process, such as a disparity between the submitted architectural and structural plans; and

WHEREAS, DOB also note this disparity, and by letter dated May 11, 2006, it again notified the owner of its intent to revoke the Permit because the submitted structural drawings did not correspond with the amended architectural drawings; and

WHEREAS, the developer submitted revised plans to DOB addressing this disparity, which were subsequently approved; and

WHEREAS, appellant was afforded the opportunity to review the revised plans, and, in a submission dated July 5, 2006, opines, in sum and substance, that the parking plan for the proposed development is unusable and unlawful because it does not provide: (1) sufficient space for cars to enter into certain spaces; and (2) sufficient turning space at various locations within the garage; and

WHEREAS, DOB, however, has approved these plans, and the appellant has not cited to any Building Code or ZR provisions that the current parking layout violates; and

WHEREAS, accordingly, since all outstanding issues

identified in the Final Determination, as well as those raised during the hearing process, have been resolved, the Board finds that the instant appeal is now moot and may be appropriately dismissed; and

WHEREAS, the Board notes that at the time of initial filing of the instant appeal, the premises was within an R5 zoning district; and

WHEREAS, however, the site has since been rezoned to an R5B zoning district; the proposed development does not comply with certain of the R5B district regulations; and

WHEREAS, because construction had commenced but not been completed as of the date of this rezoning, the owner of the premises also filed applications for the right to continue construction, pursuant to both ZR § 11-331 and the common law of vested rights, under BSA Cal. Nos. 361-05-BZY and 366-05-A; and

WHEREAS, the appellant in the instant appeal is also appearing in opposition to these vested rights cases; and

WHEREAS, the Board's decision as to the instant appeal is without prejudice to the future resolution of the vested rights cases.

Therefore it is Resolved that this appeal, which challenges the issuance of DOB Permit No. 301172184, is hereby dismissed as moot.

Adopted by the Board of Standards and Appeals, July 18, 2006.

222-04-A thru 224-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, & Spector, LLC for Dalip Karpuzi, owner.

SUBJECT – Application June 1, 2004 – To permit construction of a three one family dwellings in the bed of a final mapped street (Pemberton Avenue) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 486 Arthur Kill Road, and 120, 122 Pemberton Avenue, Block 5450, Lots 37, 35 and 36, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 20, 2006, acting on Department of Buildings Application Nos. 500772862, 500772853, and 5007728871 which reads, in pertinent part:

"The proposed construction of new residential building Use Group 2 in R3-1 Zoning District, within the bed of a mapped street is contrary to General City Law and Therefore referred to the Board of Standards

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and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in the *City Record*, to continued hearing on May 9, 2006 and June 13, 2006, and then to decision on July 18, 2006; and

WHEREAS, by letter dated May 5, 2006, the Fire Department states that it has reviewed the above project and has no objections to the proposal; and

WHEREAS, by letter dated April 7, 2006, the Department of Transportation (DOT) has reviewed this project and has recommended that the applicant provide a cul de sac on Pemberton Avenue that meets Association of State Highway Transportation Organization design standards; and

WHEREAS, by letter dated May 1, 2006, the applicant asserts that DOT’s request for a cul de sac would prohibit development of the subject property and constitutes a taking of the subject property; and

WHEREAS, the Board notes that the turnaround proposed by DOT would unduly constrain the site; and

WHEREAS, accordingly, the Board accepts the applicant’s proposal without the turnaround because DOT does not have any plans to acquire the property and the Fire Department is satisfied with the subject proposal; and

WHEREAS, by letters dated May 10, 2005 and December 27, 2005, the Department of Environmental Protection (DEP) stated that it has reviewed the project and requests that the applicant provide a 35 ft. sewer corridor in the bed of Pemberton Avenue for the installation, maintenance, and/or reconstruction of the future drainage plans or amend the drainage plan; and

WHEREAS, by letters dated November 14, 2005 and May 1, 2006, the applicant argues that if the owner creates a sewer corridor it would not allow any room for the development and to amend the drainage plan would take up to three years at a cost of twenty-five thousand dollars, thereby creating an economic hardship for the owner; and

WHEREAS, the Board was not convinced by the applicant’s assertions as to cost and time delay, and finds that the drainage plan should be amended; 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, April 20, 2006, acting on Department of Buildings Application Nos. 500772862, 500772853, and 5007728871, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 24, 2006”–(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 the either an amended drainage plan or a DEP waiver of that requirement shall be provided prior to the issuance of sewer permits;

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, July 18, 2006.

370-04-A

APPLICANT – Rothkrug, Rothkrug, Weinberg & Spector, LLC for Edgewater Developers and Builders. Inc., Owner.

SUBJECT – Application November 23, 2004 – To permit construction of a one family dwelling in the bed of a final mapped street (Edgewater Road) contrary to Article 3, Section 35 of the General City Law. Premises is located within an R2 Zoning District.

PREMISES AFFECTED – 1511 Egmont Place, north side of Egmont Place 705.9 ft east of Mott Avenue, Block 15685, Lot 48, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 4, 2004, acting on Department of Buildings Application No. 402010051 reads, in pertinent part:

“Construction of a one family two story dwelling in the bed of mapped street contrary to General City Law 35.”; and

WHEREAS, a public hearing was held on this application on March 28, 2006 after due notice by publication in the *City Record*, and then to May 9, 2006 and June 13, 2006 and decision on the July 18, 2006; and

WHEREAS, by letter dated May 5, 2006, the Fire Department states that it has reviewed the above project and requires a paved turnaround for access of emergency vehicles; and

WHEREAS, by letter dated May 25, 2006, the applicant agreed to provide a paved turnaround at the edge of Egmont Place for emergency vehicle access; and

WHEREAS, by letter dated February 3, 2005, the Department of Environmental Protection states that it has reviewed the above project and requires a minimum 35 ft. corridor in the bed of Edgewater Road between Egmont Place and Dunbar Street for the purposes of maintenance, repair, and/or reconstruction of existing or future sewers; and

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WHEREAS, by letter dated November 16, 2005, the applicant has agreed to provide a 35 ft. sewer corridor in the bed of Edgewater Road, as reflected on the BSA-approved site plans; and

WHEREAS, by letter dated March 7, 2005, the Department of Transportation states that it has reviewed the above project and requests that a turnaround be provided at the dead end of Egmont Place to improve traffic movement ; and

WHEREAS, by letters dated May 1, and May 25, 2006, the applicant has provided a revised site plan providing a 34 ft. by 30 ft. "hammerhead" turnaround; and

WHEREAS, by letter dated June 12, 2006, DOT states that it has reviewed the applicant's proposal and finds it unacceptable because it does not meet the design standards as promulgated by the American Association of State Highway Transportation Organization; and

WHEREAS, the applicant notes that the DOT recommendation would require the applicant to secure an easement from the adjacent property owner; and

WHEREAS, the Board finds that the proposed turnaround submitted by the applicant on May 24, 2006, which is supported by the Fire Department, is an acceptable equivalent to the turnaround requested by DOT notwithstanding that agency's objection; and

WHEREAS, accordingly, 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 October 4, 2004, acting on Department of Buildings Application No. 402010051, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 25, 2006"-(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 prior to the issuance of any permitting by DOB, the owner shall execute a sewer easement agreement, as approved by DEP;

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, July 18, 2006.

153-05-A

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for MSP Development, owner.

SUBJECT – Application filed on June 28, 2005 – Proposed construction of a two family homes, which lies in the bed of a mapped street (141st Avenue) which is contrary to Section 35 of the General City Law. Premises is located in R3-2 zoning district.

PREMISES AFFECTED – 222-50 and 222-54 141st Avenue, Block 13149, Lot 148, 48, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

317-05-A

APPLICANT – Kevin Shea, applicant; Woodcutters Realty Corp. Owner; Three on Third LLC, lessee.

SUBJECT – Application November 1, 2005 – Appeal challenging DOB's interpretation of various provisions of the Zoning Resolution relating to the construction of a 16 story mixed use building in an C6-1/R7-2 Zoning district, which violates Zoning Floor Area exclusions, height and setback, open space and use regulations.

PREMISES AFFECTED – 4 East 3rd Street, South east corner of East Third and the Bowery, Block 458, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, July 18, 2006.

161-05-A

APPLICANT – Tottenville Civic Association, for Willow Avenue Realty, Inc., owner.

SUBJECT – Application July 15, 2005 – Appeal challenging a Department of Buildings determination, dated June 12, 2005, that the subject premises is comprised of two separate zoning lots based on DOB's interpretation of the definition of ZR 12-10" zoning lot"(c) & (e) and therefore could be developed as individual lots.

PREMISES AFFECTED – 7194, 7196 Amboy Road and 26 Joline Avenue, Block 7853, Lots 47, 74, Richmond, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

MINUTES

For Applicant: Robert Schwiekist

For Opposition: Adam Rothkrug and Robert Caneco.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein and Peter Geis.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 15, 2006, at 10 A.M., for decision, hearing closed.

355-05-BZY

APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Adda 422 Prospect Avenue, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 422 Prospect Avenue, Brooklyn, Prospect Avenue, west of 8th Avenue, Block 869, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 10 A.M., for decision, hearing closed.

356-05-A & 357-05-A

APPLICANT – The Law Office of Fredrick A. Becker, for Structures LLC, owner.

SUBJECT – Application December 14, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning. New zoning district is R3X as of September 15, 2005.

PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra Altman, Michael Stern and Matt Probkwitz.

For Opposition: Fran Tuccio, Jose Velez, and Tracy A. Conroy.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for continued hearing.

361-05-BZY

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. §11-331 under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place, Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assembly Member Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

366-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect Terrace LLC, owner.

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common law vested rights to continue development commenced under the prior R5 zoning district. Current R5B zoning district.

PREMISES AFFECTED – 1638 8th Avenue, lot fronting on 8th Avenue between Prospect Avenue and Windsor Place,

MINUTES

Block 1112, Lots 52, 54, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assembly Member Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 10 A.M., for decision, hearing closed.

12-06-A

APPLICANT – Stuart A. Klein, Esq., for Carl F. Mattone, owner.

SUBJECT – Application January 23, 2006 – Appeal seeking a reconsideration of Department of Buildings refusal to revoke permits for a single family home which allowed numerous violations of the Zoning Resolution required side yards, waterfronts yards, and bulk regulations. Premises is located within R1-2 Zoning District.

PREMISES AFFECTED – 37-19 Regatta Place, bounded by Bay Street and the Little Neck Bay, Block 8071, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Stuart Klein and Arthur T. Sempliner.

For Opposition: Carole Slater.

For Administration: Angelina Martinez-Rubio, Department of Buildings.

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: John Keith for Assemblymember Brennan, John Carroll, Lillian West and Dehorh Monluh.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 1:30 P.M.

REGULAR MEETING TUESDAY AFTERNOON, JULY 18, 2006 1:30 P.M.

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

ZONING CALENDAR

249-04-BZ

APPLICANT – Harold Weinberg, PE for Prince Parkside LLP, owner.

SUBJECT – Application July 13, 2004 – Zoning Variance (bulk) pursuant to ZR § 72-21 to allow an enlargement of an existing non-complying UG 2 residential building in an R7-1 district; contrary to ZR §23-121, §54-31, §23-462, §25-241, §23-22.

PREMISES AFFECTED – 205 Parkside Avenue, Brooklyn, located between Ocean Avenue and Parkside Court (Block 5026, Lot 302), Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, July 18, 2006.

351-04-BZ

APPLICANT – The Augusta Group, for Stahva Realty, owner.

SUBJECT – Application November 1, 2004 – Under Z.R. § 73-44 to allow parking reduction for proposed enlargement of existing office building located in an R6B / C2-2.

PREMISES AFFECTED – 210-08/12 Northern Boulevard, thru lot between Northern Boulevard and 45th Road, 150' east of 211th Street, Block 7309, Lots 21 and 23 (Tentative Lot 21), Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Sol Korman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 401999637, reads:

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“Reduction of the parking requirement for proposed enlargement and change of use of Use Group 4 to Use Group 6, from 1/300 to 1/600 in an R6B/C2-2 District, parking category B1, requires a Special Permit pursuant to Section 73-44 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within an R6B/C2-2 zoning district, a reduction in the required number of accessory parking spaces, from 65 to 33, related to a proposed enlargement of an existing office building, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 25, 2006, June 13, 2006 and then to decision on July 18, 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, and Commissioner Collins; and

WHEREAS, initially, Community Board 11, Queens, and the Queens Borough President recommended disapproval of this application, citing concerns about traffic and a parking shortage; and

WHEREAS, the proposal first submitted to the Community Board included a larger amount of community facility space within the residential portion of the site; this was later reduced; and

WHEREAS, the subject site is located on the south side of Northern Boulevard between Oceania and 211th Streets, with frontage on Northern Boulevard and 45th Road; and

WHEREAS, the site comprises two lots – Lot 21 which is a through lot that fronts on Northern Boulevard and 45th Road, and Lot 23 which fronts on Northern Boulevard; and

WHEREAS, the majority of the site is within a R6B/C2-2 zoning district, and the portion of Lot 21 that fronts on 45th Road is within an R4 zoning district; and

WHEREAS, the total area of the lots within the R6B/C2-2 portion of the site is 10,000 sq. ft. and the area of the lot within the R4 portion is 5,000 sq. ft.; and

WHEREAS, Lot 21 is improved upon with a 9,000 sq. ft. two-story office building fronting on Northern Boulevard and subject to a prior Board grant discussed below; and

WHEREAS, Lot 23 is improved upon with a one-story restaurant and a parking lot, fronting on Northern Boulevard, to the east of the existing office building; and

WHEREAS, the applicant proposes: (1) to demolish the existing one-story restaurant building on Lot 23 and replace it with a 8,500 sq. ft. two-story plus cellar addition (the “Addition”) that will be connected to the existing office building on Lot 21, and (2) to construct a 3,740 sq. ft. two-story and cellar mixed residential and community facility building on the 45th Road frontage of Lot 21; and

WHEREAS, as to the R6B/C2-2 portion of the site, the enlarged 17,500 sq. ft. building will provide a dialysis center in the cellar and medical offices (UG 4) on the first and second floors of the existing building, and professional offices (UG 6) on the first and second floors of the Addition

and a portion of the second floor of the existing building; and

WHEREAS, as to the R4 portion of the site, the applicant proposes to construct a 3,740 sq. ft. two-story residential building (the “Residential Building”), with an additional 3,060 sq. ft. of community facility use in the cellar, to be occupied by UG 4 medical offices in the cellar and a single family dwelling on the first and second floors; and

WHEREAS, an accessory parking garage is proposed for the cellar and sub-cellar of the office building, with vehicular access from Northern Boulevard; and

WHEREAS, the Board granted a prior special permit, under BSA Cal. No. 95-93-BZ which allowed for the reduction of the required parking spaces for the existing building from 30 to 15; the remaining 15 spaces were waived, pursuant to ZR § 36-231, and no parking was provided; and

WHEREAS, pursuant to ZR § 36-21, UG 6 uses in parking requirement category B1 located within the R6B/C2-2 portion of the subject zoning lot are required to have one space per 300 sq. ft. of floor area; thus, the proposed 17,500 sq. ft. office building (which includes the Addition) is required to have 58 accessory parking spaces; and

WHEREAS, pursuant to ZR § 25-31, UG 4 uses within the R4 portion of the zoning lot are required to have one space per 500 sq. ft. of floor area; thus the proposed 3,060 sq. ft. of UG 4 medical office space in the cellar of the Residential Building is required to have seven accessory parking spaces; and

WHEREAS, therefore, a total of 65 parking spaces is required; and

WHEREAS, the applicant notes that the residential use on the R4 portion of the site requires an additional two parking spaces which will be provided separately and are not part of the instant application; and

WHEREAS, pursuant to ZR § 73-44, the Board may allow a reduction in the number of accessory off-street parking spaces required under ZR § 36-21; and

WHEREAS, for the subject R6B/C2-2 zoning district and the subject UG 6 use, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, for the subject R4 zoning district and the subject UG 4 use, the Board may reduce the required parking from one space per 500 sq. ft. of floor area to one space per 1,000 sq. ft. of floor area; and

WHEREAS, the applicant represents that assuming a special permit is obtained, the site will be developed with a 33-space accessory parking lot, to provide for both the UG 6 uses within the R6B/C2-2 and the UG 4 uses within the R4 zoning districts; and

WHEREAS, ZR § 73-44 requires that the Board determine that the proposed UG 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of the good faith of the owner in pursuing the proposed UG 6 office use; in particular, the Board observes that the applicant currently owns the site and will occupy the proposed building with medical offices, dialysis center, and other commercial offices; and

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WHEREAS, an initial version of the proposal contemplated that the Addition would have 9,000 sq. ft. of floor area; and

WHEREAS, at the Board's suggestion, the applicant modified the rear and side yards and reduced the floor area of the Addition by 500 sq. ft.; and

WHEREAS, the Board notes that, as a result of this change, the parking requirement is reduced from 67 spaces (including seven spaces required for the community facility space in the R4 zoning district) to 65 spaces; and

WHEREAS, therefore, since the applicant is requesting a 50 percent reduction in the total of number of spaces through the special permit, 33 spaces must be required; and

WHEREAS, at hearing, the Board expressed concern about the following matters: (1) the feasibility of the proposed parking layout, and (2) the demand for parking at the site; and

WHEREAS, as to the first issue, the applicant made several revisions to the parking plan so as to provide viable parking spaces while addressing community concerns about restricting traffic on the residential 45th Road; and

WHEREAS, specifically, the Board notes that the applicant initially proposed 41 attended parking spaces; and

WHEREAS, the Board expressed concern about the traffic circulation with this number of spaces and asked the applicant to re-examine the layout; and

WHEREAS, the applicant subsequently reduced the total to 34 parking spaces, including several under the ramp; and

WHEREAS, the applicant submitted revised plans which indicate that 34 spaces and better circulation could be achieved by lowering the sub-cellar to a depth of 17 feet, permitting additional parking spaces under the ramp at the sub-cellar level; and

WHEREAS, the Board notes that this allowed for additional maneuvering space; and

WHEREAS, however, the Board expressed concern about the viability of the spaces under the ramp, and upon review of the plans, determined that 33 spaces were more viable than the 34 proposed, in that some of the ramp spaces could be eliminated; and

WHEREAS, the Board also notes that it will condition this grant on DOB review and approval of the parking layout; the Board is not approving the layout; and

WHEREAS, at the Board's request, and in response to community concerns, the applicant revised the plan to limit the egress from the new building into the residential portion of the zoning, posting a sign that reads "Emergency exit, No public access"; and

WHEREAS, as to the second issue, at hearing, the Board asked the applicant to explain the operation of the dialysis center; and

WHEREAS, the applicant responded that the dialysis center requires large equipment that takes up a considerable amount of space and that the degree of potential patient and employee traffic to and from the site is therefore not proportionate to the amount of floor area; and

WHEREAS, the Board also expressed concern about

the large number of examination rooms and the amount of traffic that might be generated; and

WHEREAS, at the Board's suggestion, the applicant reduced the number of examination rooms which minimized concerns about traffic impact; and

WHEREAS, the applicant also cited to a parking and transportation survey, which indicated that on-street parking sufficiently meets the current parking demands and which also shows that the site is well-served by public transportation; and

WHEREAS, the Board notes that the survey reflects the availability of significant on street parking in the area of the premises; and

WHEREAS, additionally, the applicant notes that access to public transportation is available on Northern Boulevard in close proximity to the site; and

WHEREAS, based upon the above, 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 requisite findings pursuant to ZR §§ 73-44 and 73-03; 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. 05BSA056Q dated April 18, 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; 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 under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03, to permit, within an R6B/C2-2 zoning district, a reduction in the required number of accessory parking spaces for a proposed enlargement of an existing office building from 65 to 33, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the

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objections above noted filed with this application marked "Received June 29, 2006"--(5) five sheets and "Received July 18, 2006" -- (2) two sheets and *on further condition*:

THAT there shall be no change in ownership or use of the site or the building without prior application to and approval from the Board;

THAT a minimum of 33 parking spaces shall be provided in the accessory parking lot;

THAT no certificate of occupancy shall hereafter be issued if the use of the site is changed to a use that would require more accessory parking spaces than UG 6 parking category B1, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided;

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

THAT the layout and design of the accessory parking lot shall be as reviewed and 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;

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 of 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, July 18, 2006.

132-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Sami Alboukai, owner.

SUBJECT – Application May 26, 2005 – Under Z.R. §73-622 to request a special permit to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141, a rear yard less than the minimum per Z.R. §23-47 and a perimeter wall height greater than the maximum per Z.R. §23-31. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 220 West End Avenue, west side of West End Avenue between Oriental Boulevard and Esplanade, Block 8724, Lot 158, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: W. Tyler Faisbai.

For Administration: John Yacavone, Department of Fire.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2005, acting on Department of Buildings Application No. 302063451, reads, in pertinent part:

“[Proposed enlargement]

1. Causes an increase in the floor area exceeding the allowable floor area ratio and is contrary to the allowable floor area ratio allowed by Section 23-141 of the Zoning Resolution.
2. Causes an increase in the lot coverage exceeding the . . . lot coverage allowed by Section 23-141 of the Zoning Resolution.
3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the 30’-0” that is required.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on January 24, 2006, after due notice by publication in *The City Record*, with continued hearings on March 14, 2006, April 11, 2006, May 2, 2006, June 6, 2006 and July 11, 2006, and then to decision on July 18, 2006; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Manhattan Beach Community Group recommends disapproval of this application, contending that the proposed bulk parameters would result in a home that would negatively impact the neighborhood character and that the proposal was for a new building, not an enlargement; and

WHEREAS, the subject lot is located on the west side of West End Avenue between Oriental Boulevard and the Esplanade; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 1,460 sq. ft. (0.37 FAR) single-family dwelling; and

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

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 1,460 sq. ft. (0.37 FAR) to 4,037 sq. ft. (1.01 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will decrease the open space from 2,978 sq. ft. to 2,333 sq. ft. (the minimum required open space is 2,600 sq. ft.) and increase the lot coverage from 26 percent to 58 percent (the maximum

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permitted lot coverage is 35 percent) ; and

WHEREAS, the proposed enlargement will reduce the rear yard from 26'-11" to 20'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, the enlargement will reduce one side yard from 5'-9" to 5'-0" and the other side yard from 9'-10" to 8'-0"; the resulting side yards meet the minimum requirement and no waiver is necessary; and

WHEREAS, similarly, the enlargement will reduce the front yard from 28'-8" to 15'-0", which complies; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 23'-4", but reduced it to 21'-0" at the Board's request; this height complies with the district regulations; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.04 to 1.01, also at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, the Board also notes that the proposed front yard, though diminished, still complies with applicable R3-1 district requirements, as do the side yards; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, the applicant submitted photographs of several homes on West End Avenue that are comparable to the proposed home; and

WHEREAS, upon review of the submitted photographs, the Board notes a number of comparably-sized homes in the immediate area, and finds the proposed home to be compatible with these homes; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor 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 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 R3-1 zoning district, the proposed enlargement of a single-family dwelling, which

does not comply with the zoning requirements for Floor Area Ratio, open space, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-47, and 23-631; *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 July 14, 2006"-(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,037 sq. ft., a total FAR of 1.01, a perimeter wall height of 21'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 728 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors and walls indicated as being retained on Plans 10-12, 18, and 19, stamped June 20, 2006, shall be retained and reviewed by DOB prior to the issuance of permits;

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as 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 objections(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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

WHEREAS, the decision of the Queens Borough Commissioner, dated August 3, 2005, acting on Department

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of Buildings Application No. 402179664, reads, in pertinent part:

“The physical culture establishment is not permitted as of right in M1-1 zoning districts, but requires the special permit from the BSA as per 42-31.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, a three-story physical culture establishment (“PCE”) with 49,634 total sq. ft. of floor space, contrary to ZR § 32-10; and

WHEREAS, the PCE (to be operated as “Spa World”) will contain facilities for massage and exercise, accessory pools, saunas, and tubs, and other ancillary services related to the operation of the facility; and

WHEREAS, the proposed hours of operation are as follows: bath and locker room area – 6 a.m. to midnight, seven days a week (no admission after 10 p.m.); restaurant and pools – 10 a.m. to 10 p.m., seven days a week; massage and fitness areas – 6 a.m. to 10 p.m., seven days a week; and

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

WHEREAS, the Board notes that the applicant originally proposed a three-story plus cellar facility that included a PCE as well as a hotel on the third floor, with 15 rooms; this proposal was modified during the course of the public hearing process to the current version; and

WHEREAS, a public hearing was held on this application on March 28, 2006, after due notice by publication in *The City Record*, with continued hearings on April 25, 2006, May 16, 2006 and June 20, 2006, and then to decision on July 18, 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, and Commissioner Collins; and

WHEREAS, Community Board 7, Queens, recommends disapproval of the current version of this application; and

WHEREAS, the Community Board opposed the application because of concerns about potential traffic impacts; and

WHEREAS, State Senator Padavan and Council Member Avella also oppose this application; Council Member Avella’s reasons for opposing the application are discussed below; and

WHEREAS, certain neighbors also oppose the application; and

WHEREAS, however, the Queens Borough President, Helen Marshall, recommended approval of the initial version of the application, on condition that parking be attended, that deliveries occur at 6 a.m. or during off peak hours, that the facility be open to all in the local community, and that operation of the facility comply with all applicable laws; and

WHEREAS, further, State Assembly Member Meng and Council Member Gallagher support the application; and

WHEREAS, finally, the application has the support of

the pastors of both the Full Gospel New York Church and the Arumdaun Presbyterian Church; and

WHEREAS, the applicant states that an approved interior fire alarm system will be installed in the entire PCE space, with the addition of smoke detectors, manual pull stations, local audible and visual alarms, and be connected to a FDNY-approved Central Station; and

WHEREAS, accordingly, the Fire Department has indicated to the Board that it has no objection to this application; and

WHEREAS, the subject site is located in an M1-1 zoning district, on a block bounded by 11th and 14th Avenues and 131st and 132nd Streets, and has a lot area of 30,124 sq. ft.; and

WHEREAS, the site was formerly occupied by a one-story manufacturing building, which has been demolished; and

WHEREAS, construction on the new building has commenced; however, no certificate of occupancy may be issued for the proposed PCE without the subject special permit; and

WHEREAS, Spa World will occupy approximately 30,049 sq. ft. of zoning floor area and 19,585 sq. ft. of gross floor area in the cellar (for a total floor space devoted to the facility of 49,634 sq. ft.); there will also be a 4,603 sq. ft. boiler room in a sub-cellar; and

WHEREAS, 106 attended accessory parking spaces will also be provided on two above-grade levels (nine reservoir spaces are included in this total); and

WHEREAS, the applicant represents that the PCE facility will be located in the cellar (19,585 sq. ft.), first floor (15,565 sq. ft.), second floor (8,204 sq. ft.), and third floor (6,280 sq. ft.); and

WHEREAS, the cellar will contain the lobby, locker rooms, rest areas, tubs, saunas, and showers; and

WHEREAS, the first floor will contain facilities for massage, spaces for salon treatments (nail and skin care), saunas, a snack bar, and toilets; and

WHEREAS, the first floor will also contain the lower level accessory parking area (52 spaces), as well as the drop-off and pick-up zone for the attended parking; and

WHEREAS, the remainder of the parking spaces (54 spaces) will be on the upper level; and

WHEREAS, the second floor will contain private baths, powder rooms, and, in an outdoor spa area, hot pools, sauna, and tubs; and

WHEREAS, the third floor will contain a VIP lounge, a fitness area with exercise equipment, a yoga/aerobics room, and a lounge, dining area, and kitchen; and

WHEREAS, the Board notes that this application is one for a special permit, not a variance, and some discussion of the distinction is warranted; and

WHEREAS, a special permit use is a specifically contemplated and expressly permitted use, approved by the City Planning Commission (CPC) and the City Council for location within specified zoning districts, so long as this Board or CPC finds that the proposed use is in harmony with the general zoning plan and will not create adverse impacts

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on the neighborhood; and

WHEREAS, no showing of hardship is required to obtain a special permit for a PCE; however, the Board must ensure that conditions attach to any issuance of a PCE special permit that will serve to minimize or negate potential impacts upon the neighborhood; and

WHEREAS, for a PCE special permit, the proposed facility must meet the definition of PCE as set forth in ZR § 12-10, and the applicant must meet the specific prerequisites and findings set forth in ZR § 73-36, as well as the applicable general special permit findings of ZR § 73-03; and

WHEREAS, ZR § 12-10 “Physical culture or health establishments” provides, in pertinent part, that a PCE “is any establishment or facility, including commercial and non-commercial clubs, which is equipped and arranged to provide instruction, services, or activities which improve or affect a person’s physical condition by physical exercise or massage . . . Therapeutic or relaxation services, such as sun tanning, baths, showers, tubs, Jacuzzis, whirlpools, saunas, steam rooms, isolation flotation tanks and meditation facilities may be provided only as accessory to the physical exercise program or massage facility.”; and

WHEREAS, ZR § 73-36, which authorizes the Board to grant a special permit for a PCE, specifies the zoning districts in which the PCE special permit is available; and

WHEREAS, the Board has confirmed that the special permit is available in the subject M1-1 zoning district; and

WHEREAS, the Board may permit a PCE in this zoning district provided that two findings are met; and

WHEREAS, the first finding is that the use is so located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the Board observes that while the subject site is within a manufacturing district, there are residential uses in the neighborhood; and

WHEREAS, specifically, while the site is bordered on the south and east by M1-1 zoning, an R3-2 district is to the north, across 11th Avenue, and an R4 district is to the west, across 131st Street; and

WHEREAS, in addition to the subject site, the subject block is developed with a warehouse and automobile repair facility; and

WHEREAS, to the east and across 132nd Street there is a truck transfer facility and a shopping center; and

WHEREAS, to the north and across 11th Avenue there is a townhouse development, and to the west there is a mix of residential and industrial uses; and

WHEREAS, thus, the context of the neighborhood is best characterized as mixed-use, with the subject block in particular being occupied by manufacturing and commercial uses; and

WHEREAS, the Board notes that Spa World will function as a commercial enterprise, and as such will not negatively affect the mixed-use character of the neighborhood, which includes other commercial and retail uses; and

WHEREAS, nor is Spa World fundamentally incompatible with the residential uses; and

WHEREAS, the Board notes that it often has granted PCE special permits for facilities that are in proximity to residences – even in the same building as residences – in all boroughs of the City; and

WHEREAS, the Board notes that the enactors of the ZR – CPC and the City Council – apparently agree that residences and PCEs can be compatible, as evidenced by the inclusion of zoning districts that allow residential use in the list of permissible districts for the location of PCEs; and

WHEREAS, however, the Community Board suggests that the scale of Spa World will lead to adverse impacts on traffic and parking, which will compromise the character of the neighborhood and impact the residences; and

WHEREAS, the applicant contests this argument, and submitted a detailed traffic and parking study which purported to refute it; and

WHEREAS, while the initial study concluded that there would not be any significant traffic or parking impacts, in terms of overall traffic generation and loading of intersections and in terms of effect on on-street parking availability, the Board nevertheless asked the applicant to make certain refinements; and

WHEREAS, specifically, the Board asked that the study be modified to increase the amount of the proposed percentage of auto and/or taxi trips that would be generated by the proposal at peak hours; and

WHEREAS, the applicant subsequently modified the study to increase this percentage from 40 percent to 90 percent, which the Board finds is more realistic given the location of the site; and

WHEREAS, the modified study included an analysis of three different traffic scenarios: (1) Scenario A, which compares the proposed PCE to an as of right retail/commercial/office building, as based on the CEQR technical manual; (2) Scenario B, which compares the proposed PCE to an as of right retail/office scenario, based upon Spa World’s business plan; and (3) Scenario C, which is similar to Scenario B, except that the vehicle occupancy rate for the weekend period has been decreased from 3 persons to 2.5, in order to be more conservative; and

WHEREAS, the study includes modal split and vehicle trip analysis for all three scenarios, as well as an analysis of the PCE’s utilization rates using assumptions that the Board has reviewed and finds credible; and

WHEREAS, for Scenarios A and B, the study concludes: (1) that the as of right development would generate significantly more vehicle trips than the proposed PCE; and (2) that the maximum parking demand generated by the PCE for both weekdays and Saturdays would not exceed the available accessory parking capacity proposed to be available at the facility; and

WHEREAS, for Scenario C, the study concludes that the as of right development would generate more trips than the PCE, and that the maximum parking demand generated by the PCE on Saturday would be 108 spaces, which could be accommodated by the accessory parking lot (106 spaces) and available on-street parking (two spaces); and

WHEREAS, the study’s on-street parking survey was

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the result of a field investigation of on-street parking within a 400 ft. radius of the site; the investigation revealed that on Saturdays, there was a minimum of 99 available spaces to a maximum of 138 available spaces throughout the day, which the Board observes is well more than enough to accommodate the two spaces that are needed under the conservative Scenario C; and

WHEREAS, the modified study notes that Spa World will provide 106 accessory attended parking spaces (including nine reservoir spaces); and

WHEREAS, the Board has reviewed the study and finds its methodology and results credible; and

WHEREAS, because the parking demand generated by Spa World will be accommodated almost exclusively on-site in the attended parking lots, the Board finds that there will not be any detrimental parking impact on the neighborhood; and

WHEREAS, as to traffic, the Board notes that the traffic study concludes that the vehicular trips generated by Spa World are significantly less than what would be generated by an as of right commercial use; and

WHEREAS, further, the Board requested that the applicant modify its vehicular entrance, so as to lessen the potential impact that the generated traffic might have on the streets surrounding the site; and

WHEREAS, originally, the applicant had proposed a drop-off in front of the facility on 11th Avenue, across from residences, with a “u”-shaped driveway and two curb cuts; parking was located at the rear of the facility, and valets would take the vehicles to the parking area; and

WHEREAS, the Board asked the applicant to modify the site plan so the vehicle drop and pick up zone will be at the rear of the facility where the parking is located, so that no vehicles using the parking lots will queue along 11th Avenue across from residential uses, circle the premises, or create unnecessary traffic that might impact traffic patterns or negatively affect adjacent uses; and

WHEREAS, the front entrance would be used for taxi drop-off and pedestrian traffic only, eliminating the queuing of vehicles; and

WHEREAS, in response, the applicant submitted a modified site plan illustrating the requested change; and

WHEREAS, additionally, the Board asked the applicant to include traffic control signage as part of its application; and

WHEREAS, the applicant responded by submitting a detailed sign plan, showing the text of the signage and its locations; and

WHEREAS, the Board has reviewed this sign plan and finds that it will aid in guiding traffic flow to and from the site in a manner that will minimize potential traffic impacts; and

WHEREAS, in conclusion, the Board finds that the applicant has successfully established that there will be no adverse traffic or parking impacts due the proposed PCE, and further finds that the modifications to the entrances and the signage plans further ensure that negative traffic impacts will not occur; and

WHEREAS, the Board also inquired as to other possible negative impacts, including the potential that lighting from the third floor open pool area could affect neighboring residential uses; and

WHEREAS, in response, the applicant explained that the open area would be screened with a 6’-6” parapet, and that all lighting would be directed downwards and away from any adjacent residential uses; and

WHEREAS, the applicant has submitted plans that show the location of the lighting and the estimated foot candle data, which the Board finds acceptable; and

WHEREAS, the Board is also limiting accessory business signage to a single sign, as illustrated on the BSA-approved plans; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties; and

WHEREAS, accordingly, the first finding for a PCE special permit, as set forth at ZR § 73-36, is met; and

WHEREAS, the second finding is that the PCE contain one or more of the following: (1) a regulation size sports facility, such as a basketball court; (2) a 1,500 sq. ft. minimum swimming pool; (3) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or (4) facilities for the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, as noted above, the proposed PCE will contain exercise areas and massage areas; and

WHEREAS, however, ZR §§ 12-10 and 73-36 also provide that therapeutic or relaxation services may only be provided as accessory to the types of facilities mentioned above; and

WHEREAS, Council Member Avella, through his consultant, argues that the proposed facility will contain mostly therapeutic and relaxation services, in the form of tubs, pools, treatment rooms, and private baths; and

WHEREAS, the consultant states that only approximately 1,300 sq. ft. of the proposed facility will be devoted to massage, and questions whether this amount of floor area can be appropriately characterized as the primary use in a facility with a total floor space of 49,634 sq. ft.; and

WHEREAS, in support of this argument, the consultant cites to the definition of “accessory use” in ZR § 12-10, and to a 1960 Supreme Court case in which the court found that a 32-lane bowling alley was not properly characterized as accessory to a hotel having only 35 rooms (La Vecchia v. Board of Standards and Appeals, 204 N.Y.S.2d 429); and

WHEREAS, the consultant characterizes the proposed facility not as a PCE, but as a therapeutic services facility with accessory massage; and

WHEREAS, the Board respectfully disagrees with the Council Member’s consultant; and

WHEREAS, first, as noted by the applicant, DOB has issued PCE objections, and the Board has issued PCE special permits, for comparable facilities in Manhattan, which provide a full range of spa services, including massage; and

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WHEREAS, as set forth above, DOB reviewed the proposed plans for Spa World, concluded it was a PCE, and issued an objection stating that the PCE special permit was required; and

WHEREAS, further, the Board has reviewed the definition of accessory use and finds that it does not support the Council Member's consultant's argument; and

WHEREAS, the accessory use definition as set forth in ZR § 12-10 provides, in sum and substance, that an accessory use is a use: (1) which is conducted on the same zoning lot as the primary use; (2) is a use which is clearly incidental to, and customarily found in connection with, such principal use; and (3) is in the same ownership as such principal use, or is operated and maintained on the same site for the benefit or convenience of the customers or visitors of the primary use; and

WHEREAS, the applicant states, and the Board agrees, that that the proposed therapeutic and relaxation services to be located in the proposed PCE meet this definition; and

WHEREAS, the Board notes that no mention is made in this definition of the amount of square footage devoted to the primary use versus the accessory use; and

WHEREAS, further, while many of the accessory uses listed as examples in ZR § 12-10 may be smaller than the primary use, others, such as the storage of goods in connection with commercial or manufacturing uses or accessory parking lots, could conceivably occupy more space within a building or area on a lot than the primary use; and

WHEREAS, had the City Council or CPC intended that the square footage devoted to a proposed use would be determinative of its status as primary or accessory, the plain language of ZR § 12-10 "accessory use" would have included parameters of this nature; and

WHEREAS, while square footage may be a relevant consideration in some cases involving other primary uses, the Board is aware that many PCEs have a broad range of services and that the devotion of square footage to designated PCE uses versus what may be called therapeutic or relaxation uses may not always reflect a ratio where the primary use occupies more square footage than the accessory use; and

WHEREAS, additionally, even assuming that such a consideration is relevant to the instant application, the Board finds that the Council Member's consultant misstates the ratio of square footage devoted to defined PCE uses versus that devoted to therapeutic/relaxation services; and

WHEREAS, the relevant comparison is not the square footage devoted to PCE uses versus the total square footage of the facility, as assumed by the consultant; and

WHEREAS, instead, the appropriate measure of comparison is between the amount of square footage devoted to massage and exercise versus the amount of square footage devoted to actual therapeutic pools, saunas, and tubs; and

WHEREAS, the PCE also contains beauty treatment rooms, office space, a reception area, a main hall, a lobby hall, a laundry room, a janitor room, a snack bar, a kitchen and dining room, restrooms, powder rooms, employee rooms and office, locker rooms, a computer room, and a play room, among other spaces; and

WHEREAS, these areas are not devoted to therapeutic or relaxation services and should not be included in the ratio; and

WHEREAS, as reflected in the applicant's July 5 submission, the square footage of the facility devoted to massage, exercise and aerobics is 3,548 sq. ft., and the area devoted to pools, tubs, saunas, and other therapeutic or related services is 8,058 sq. ft.; and

WHEREAS, while the aggregate floor space devoted to the tubs, saunas, baths, pools and other such services still may exceed that devoted to the aggregate of the PCE uses, the disparity is much less significant than argued by the Council Member's consultant; and

WHEREAS, finally, the Board does not find the consultant's citation of the La Vecchia case to be relevant; and

WHEREAS, the Board notes that the case is factually dissimilar: the hotel under consideration in La Vecchia proposed to open the bowling alley to non-guests of the hotel; and

WHEREAS, thus, the bowling alley was not exclusively for the use of the hotel guests; and

WHEREAS, in contrast, the therapeutic services available at Spa World are available only to customers of Spa World; and

WHEREAS, further, no mention of the amount of square footage devoted to the primary and accessory uses is made by the court in La Vecchia; and

WHEREAS, based upon the above, the Board rejects the Council Member's consultant's contention as without merit, and accordingly determines that the second finding for the PCE special permit, as set forth at ZR § 73-36, has been met; and

WHEREAS, while the opposition has argued that the proposed PCE will negatively impact area traffic flow and parking availability, no evidence in support of this argument is in the record; in fact, the record shows that neither parking or traffic will be impacted; and

WHEREAS, nor will the residential uses be impacted in any other manner to a degree greater than what might occur from an as of right commercial development; and

WHEREAS, as noted by the applicant, the proposed PCE will provide a family-oriented spa experience and make use of a parcel of land that was underutilized; and

WHEREAS, further, the proposed facility now incorporates many features requested by the Board, including an improved circulation plan and signage; and

WHEREAS, the Board notes that its grant is conditioned in order to ameliorate any potential effects the proposed PCE might have; said conditions are reflected below; and

WHEREAS, the Board further notes that unlike an as of right commercial development, the grant herein imposes as a condition hours of operation that will limit the amount of traffic generation; in particular, the Board notes that there will be no entry to Spa World permitted after 10 p.m.; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or

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

WHEREAS, thus, based upon its review of the record, the Board has determined that the evidence submitted by the applicant supports the requisite findings set forth at ZR §§ 73-36 and 73-03; and

WHEREAS, though not related specifically to the PCE special permit findings, there was some discussion on the record related to the proposed building itself, and not the proposed uses; and

WHEREAS, specifically, Council Member Avella, through his consultants, contended that the building as proposed violated certain bulk provisions of the ZR and certain Building Code provisions; and

WHEREAS, the applicant conceded that some of the concerns were valid, and modified the plans accordingly; and

WHEREAS, the applicant also disputed some of the contentions; and

WHEREAS, the Board notes that its grant herein relates to the use of the premises as a PCE, and no approval as to ZR bulk provisions or Building Code compliance is being made; in fact, the Board has no authority under the special permit to waive such provisions; and

WHEREAS, further, the Board notes that DOB shall conduct a full plan examination of the proposed construction plans for ZR bulk and Code compliance; and

WHEREAS, should any such non-compliance be revealed through DOB's review, the applicant will be required to modify the plans accordingly; however, none of this has any relevance to the Board's determination as to the PCE special permit application; and

WHEREAS, in addition to the concerns raised by Council Member Avella and his consultant, the Board expressed concern that the proposed cellar level was actually a basement, which would mean the floor space would count as floor area; this would render the proposed building over-bulk; and

WHEREAS, the Board asked the applicant to confirm with DOB the status of the lowest level of the proposed building; and

WHEREAS, pursuant to a reconsideration submitted into the record, DOB has confirmed that the cellar of the facility is in fact a cellar and not a basement; 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, CEQR No. 06BSA015Q, dated April 10, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, a three-story physical culture establishment with a total of 49,634 sq. ft. of floor space, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 12, 2006"-(19) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, from July 18, 2006 to July 18, 2016;

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

THAT the hours of operation shall be as follows: bath and locker room area – 6 a.m. to midnight, seven days a week (no admission after 10 p.m.); restaurant and pools – 10 a.m. to 10 p.m., seven days a week; massage and fitness areas – 6 a.m. to 10 p.m., seven days a week;

THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

THAT a minimum of 106 attended accessory parking spaces (including nine reservoir spaces) shall be provided;

THAT all trash pick-up and deliveries shall occur during off peak hours between 6 a.m. and 8 a.m. and 2 p.m. to 4 p.m.;

THAT all exterior lighting be directed downwards and away from adjacent uses;

THAT shuttle bus service shall be provided for Spa World employees to and from the facility;

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

THAT accessory business signage shall only be permitted as indicated on the BSA-approved plans;

THAT all directional signage shall be installed and maintained as indicated on the BSA-approved plans;

THAT Spa World membership shall be made available to local community residents;

THAT DOB shall perform a full plan examination of Application No. 402179664 for zoning bulk and Building Code compliance; no professional certification is permitted;

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

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THAT fire safety measures, including a sprinkler system, shall be as installed and maintained on the Board-approved plans;

THAT an interior fire alarm system shall be provided as set forth on the BSA-approved plans 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 of 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, July 18, 2006.

314-05-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Mouhadeb, owner.

SUBJECT – Application October 25, 2005 – Special Permit Z.R. §73-622 for an enlargement to a single family residence which proposed an increase in the degree of non-compliance with respect to floor area ratio and open space/lot coverage as per Z.R. §23-141b, less than the total required side yards as per Z.R. §23-361a and a rear yard less than the required rear yard as per Z.R. §23-47. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 1670 East 23rd Street, East 23rd Street between Avenue P and Quentin Road, Block 6785, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, September 29, 2005, acting on Department of Buildings Application No. 302002277, reads, in pertinent part:

“[Proposed enlargement]

1. Increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b).
2. Increases the degree of non-compliance of an existing building with respect to open space/coverage which is contrary to ZR Section 23-141(b).

3. Results in one side yard of less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).

4. Results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47.”

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 6, 2006, and then to decision on July 18, 2006; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject lot is located on the west side of East 23rd Street between Avenue P and Quentin Road; and

WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and is occupied by a 2,224.8 sq. ft. (0.556 FAR) single-family dwelling; and

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

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 2,224.8 sq. ft. (0.556 FAR) to 3,966.56 sq. ft. (0.991 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will decrease the open space from 2,291 sq. ft. to 1,915 sq. ft. (the minimum required open space is 2,600 sq. ft.) and increase the lot coverage from 43 percent to 52 percent (the maximum permitted lot coverage is 35 percent); and

WHEREAS, the proposed enlargement will reduce the rear yard from 29'-10 ¼" to 23'-9 ½" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, the enlargement will maintain the complying side yard of 8'-1" and the existing non-complying side yard of 3'-11", increasing the latter's degree of non-compliance; and

WHEREAS, the enlargement will maintain the existing non-complying front yard of 8'-8 ½"; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 21'-0" and a total height of 35'-0", but reduced the heights to 20'-3 ½" and 34'-0", respectively; and

WHEREAS, the Board notes that the proposed wall

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height and overall height complies with applicable R3-2 district requirements; and

WHEREAS, additionally, the applicant reduced the proposed FAR from 1.048 to 0.991, at the Board's request; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, specifically, the Board requested that the applicant establish a context for the proposed full encroachment of the front porch into the non-complying front yard; and

WHEREAS, the applicant submitted photographs of several homes on East 23rd Street that are comparable to the proposed home in this regard; and

WHEREAS, however, the Board remained unconvinced that the proposed front porch is compatible with the neighborhood and asked the applicant to remove it; and

WHEREAS, the Board notes that the front porch is now subject to DOB review; and

WHEREAS, the Board also asked the applicant to remove the garage from the plans as it did not appear to provide viable automobile access; and

WHEREAS, accordingly, with these modifications, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor 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 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 R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio, open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, 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 "Received July 18, 2006"-(13) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,966.56 sq. ft., a total FAR of 0.991, a perimeter wall height of 20'-3 1/2", and a total height of 34'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 502.13 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled A-1 thru A-13, stamped July 18, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the size and location of the front and rear porches;

THAT DOB shall review and approve the location of any garage;

THAT the use and layout of the cellar shall be as 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 objections(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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2006.

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald's Corporation, owner.

SUBJECT – Application December 14, 2005 – Z.R. §73-243 proposed re-establishment of an expired special permit for an eating and drinking establishment with an accessory drive-through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jeffrey Chester.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Queens Borough Commissioner, dated June 15, 2005, acting on Department of Buildings Application No. 402136023, reads:

“Proposed re-establishment of an expired special permit 49-94-BZ in a C1-2 zoning district, is contrary to ZR 32-31, refer to Board of Standards and Appeals for special permit.”; and

WHEREAS, this application, made pursuant to ZR §§ 73-243 and 73-03, is for the re-establishment of a special permit for an existing eating and drinking establishment with an accessory drive-through facility in a C1-2 (R5) zoning district, as well as for an amendment to the plans and an extension of the hours of operation; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2006, and then to decision on July 18, 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, Queens, recommends approval of this application, on the condition that a “Do Not Enter” sign be installed at the Mott Avenue entrance to the drive-through; and

WHEREAS, the subject site is a 19,861 sq. ft. lot located on the southeast corner of Mott Avenue and Beach Channel Drive; and

WHEREAS, the subject lot is improved upon with an existing building, occupied by a McDonald’s fast food restaurant which contains 2,661 sq. ft. of floor area; and

WHEREAS, on June 16, 1998 under BSA Cal. No. 49-94-BZ, the Board granted a special permit pursuant to ZR § 73-243, authorizing a proposed drive-through facility as an accessory use to an eating and drinking establishment, for a period of five years to expire on June 16, 2003; and

WHEREAS, the applicant requests to re-establish the special permit for a period of five years, to make minor changes to the plans, and to extend the hours of operation; and

WHEREAS, the applicant represents that the special permit lapsed due to management oversight; and

WHEREAS, the applicant states that the site is operated in substantial compliance with the Board-approved plans from the 1998 grant; and

WHEREAS, the applicant represents that the site and drive-through facility provide reservoir space for a ten-car queue, as required; and

WHEREAS, the applicant has identified minor changes to the site which need to be legalized and additional minor changes which are proposed to the approved plans, none of which directly impacts the accessory drive-through; and

WHEREAS, specifically, the applicant notes that the site is lacking a full four-foot landscaping buffer adjacent to the residential uses as required as a condition of the original grant; and

WHEREAS, at hearing, the Board asked the applicant to restore the buffer; and

WHEREAS, the applicant submitted plans that show the restoration of the buffer; and

WHEREAS, as indicated on the revised site plan, this buffering consists of landscaping and fencing along the southwest corner of the lot; and

WHEREAS, additionally, the applicant proposes to remove the play area, and provide new landscaping, a new sidewalk and vestibule, and a new metal fence for the Mott Avenue frontage; and

WHEREAS, in response to the Community Board’s concerns about signage, the Board asked the applicant to document the signs at the site and address their compliance; and

WHEREAS, the applicant provided photographs depicting the signage and compliance with applicable zoning regulations; and

WHEREAS, the Board has reviewed the revised site plan and finds that it is acceptable; and

WHEREAS, the applicant represents that the facility causes minimal interference with traffic flow in the immediate vicinity because the existing restaurant does not generate significantly greater traffic flow than would be generated by other as of right commercial uses; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant has submitted photographs of the premises and the surrounding streets, which further supports this representation; and

WHEREAS, the applicant represents that the restaurant and drive-through do not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, in support of this representation, the applicant states that the modest volume of customer traffic does not impact nearby residential uses; and

WHEREAS, as to the hours of operation, the applicant requests an amendment to permit the drive-through to operate 24 hours, daily; and

WHEREAS, at hearing, the Board questioned the need for the extended hours; and

WHEREAS, the applicant responded that in order to remain competitive in its area, it needed to have unlimited hours of operation; and

WHEREAS, in support of this representation, the applicant provided information that shows that competing fast food restaurants, across the street and within close proximity, have unlimited hours of operation; and

WHEREAS, the Board has reviewed this information and agrees that the extended hours are necessary to the operation of the restaurant and will not create any negative impacts on adjacent uses; and

WHEREAS, based upon its review of the submitted evidence, the Board finds that the applicant has met the specific findings for a special permit set forth at ZR § 73-243; and

WHEREAS, the Board finds that under the conditions and

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safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6NYCRR, Part 617.4; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination 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 and grants the re-establishment of a special permit for an existing eating and drinking establishment with an accessory drive-through facility in a C1-2 (R5) zoning district, which requires a special permit pursuant to ZR §§ 73-243 and 73-03, and for an amendment to the plans and an extension to the hours of operation; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2006"- (5) sheets; and *on further condition*:

THAT this permit shall be issued for a term of five years from July 18, 2006, the date of the grant, to expire on July 18, 2011;

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 hours of operation shall be 24 hours, daily;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT all signage shall conform with the underlying C1-2 district regulations;

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

Adopted by the Board of Standards and Appeals, July 18, 2006.

4-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isaac

Tessler and Miriam Tessler, owners.

SUBJECT – Application January 5, 2006 – Special Permit Z.R. §73-622 for an enlargement of an existing single family residence to vary ZR §23-141 for open space and floor area and ZR §23-47 for less than the minimum rear yard. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1435 East 21st Street, East 21st Street between Avenue M and Avenue N, Block 7657, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 302046015, reads, in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted Floor Area Ratio of .50.

Proposed plans are contrary to ZR 23-141 in that the proposed Open Space Ratio is less than the minimum required Open Space Ratio of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard of 20 feet is less than the minimum required rear yard of 30’.”; and

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

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, with a continued hearing on June 13, 2006, and then to decision on July 18, 2006; and

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

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

WHEREAS, the subject lot is located on the east side of East 21st Street between Avenue M and Avenue N; and

WHEREAS, the subject lot has a total lot area of 4,700 sq. ft., and is occupied by a 2,171.36 sq. ft. (0.46 FAR) single-family dwelling; and

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

WHEREAS, in order to establish that the proposal constitutes an enlargement, the Board asked the applicant to

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provide plans that clearly identified which portions of the home were being retained; and

WHEREAS, the applicant seeks an increase in the floor area from 2,171.36 sq. ft. (0.46 FAR) to 4,720.26 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,350 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 3,632 sq. ft. to 2,531.43 sq. ft. (the minimum required open space is 3,525 sq. ft.) and decrease the open space ratio from 167 percent to 53.62 percent (the minimum required is 150 percent) ; and

WHEREAS, the proposed enlargement will reduce the rear yard from 35'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, the enlargement will reduce the complying side yard from 18'-6" to a complying 8'-0" and maintain the existing non-complying side yard of 4'-9", increasing the latter's degree of non-compliance (a minimum total of 13'-0" of side yards is required, with a minimum of 5'-0" per yard); and

WHEREAS, the enlargement will maintain the existing complying front yard of 15'-6"; and

WHEREAS, initially, the applicant proposed a perimeter wall height of 25'-0" and a total height of 41'-0", (the maximum perimeter wall height permitted is 25'-0"); the existing conditions are a perimeter wall height of 22'-0" and a total height of 36'-6"; and

WHEREAS, also, the applicant initially proposed an FAR of 1.06; and

WHEREAS, at the Board's suggestion, the applicant reduced the total height to 38'-0" to match the height of the adjacent building, the perimeter wall height to 24'-6", and the FAR to 1.0; and

WHEREAS, the Board notes that this FAR is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size; and

WHEREAS, the Board notes that the proposed height still complies with applicable R2 district requirements; and

WHEREAS, at hearing, the Board asked the applicant to submit photographs of and information about other homes in the area in order to establish a context for this enlargement; and

WHEREAS, specifically, the Board requested that the applicant establish a context for the proposed height; and

WHEREAS, the applicant submitted information on homes in the vicinity that are comparable in height to the proposed home; and

WHEREAS, upon review of the submitted information, the Board notes a number of comparably-sized homes in the immediate area, and finds the proposed home to be compatible with these homes; and

WHEREAS, as noted above, the Board also asked the applicant to submit documentation on the portions of the foundation, walls, and floors to be retained; and

WHEREAS, the applicant submitted coded plans

indicating what was being retained; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor 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 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 enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space, and rear yard, contrary to ZR §§ 23-141 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 "Received July 18, 2006"-(14) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,720.26 sq. ft., a total FAR of 1.0, a perimeter wall height of 24'-6", and a total height of 38'-0", all as illustrated on the BSA-approved plans;

THAT the total attic floor area shall not exceed 537.33 sq. ft., as confirmed by the Department of Buildings;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled P1, P1a, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12 and P13, stamped July 18, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT DOB shall review and approve the location of any garage;

THAT DOB shall review and approve the location of any porch;

THAT the use and layout of the cellar shall be as 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 objections(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

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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, July 18, 2006.

290-02-BZ thru 314-02-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Tapei Court)

SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district’s equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners’ association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.

PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

151-05-BZ

APPLICANT – The Law Office of Frederick A. Becker for 100 Varick Street, LLC, Owner.

SUBJECT – Application June 16, 2005 – Zoning Variance (use) pursuant to Z.R. §72-21 to allow a proposed ten (10) story residential building containing seventy-nine (79) dwelling units located in an M1-6 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 100 Varick Street, located on the easterly side of Varick Street between Watts and Broome Streets, Block 477, Lots 35 and 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Fredrick A. Becker, Pedro Marmolejos and Michael Even.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 8, 2006, at 1:30 P.M., for decision, hearing closed.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Laid over to August 15, 2006, at 1:30 P.M., for continued hearing.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joseph Morsellino and Robert Pauls.

For Opposition: Jack Lester.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.

SUBJECT – August 26, 2005 – Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR§§23-141 and 23-461. The application also proposed an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57’ east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for continued hearing.

311-05-BZ/310-05-A

APPLICANT – Joseph P. Morsellino, Esq., for Bernard F. Dowd, owner.

SUBJECT – Application October 19, 2005 – Special Permit pursuant to Z.R. Section 73-27 to legalize the existing second floor use in an existing funeral establishment. The site is located in a C4-2 zoning district. A case (310-05-A) was filed with the BZ case on 10/19/05 since the C of O lapsed for the prior A case (232-52-A).

PREMISES AFFECTED – 165-18/28 Hillside Avenue, Northeast corner Hillside Avenue and Merrick Boulevard, Block 9816, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Joseph Morsellino.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

363-05-BZ

APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.

SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.

PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman, Amy Klet and Arman Garman.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

32-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, by Steven M. Sinacori, for Manhattan College, owner.

SUBJECT – Application February 28, 2006 – Special permits pursuant to Z.R. sections 73-482 and 73-49 to allow an accessory group parking facility in excess of 150 spaces and to allow roof-top parking. Zoning variance pursuant to Z.R. Section 72-21 is also proposed to allow proposed parking facility to violate applicable height and setback requirements of Z.R. Section 33-431. Premises is located within an R6/C2-

3 zoning district.

PREMISES AFFECTED – 5935 Broadway, east side of Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Richard Bowers, Roy Rosenbain, Charles Chisolin and Steve Sinacori.

For Opposition: C. Adnian DeRoo.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 22, 2006, at 1:30 P.M., for decision, hearing closed.

54-06-BZ

APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.

SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story & cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR Sections 113-51 (Floor Area); 113-55 & 23-631 (Perimeter Wall Height, Total Height & Sky Exposure Plane); 113-542 & 23-45 (Front Yard & Setback); 113-543 & 23-461(a) (Side Yard); 113-544 (Rear Yard); 113-561 & 23-51 (Parking); and 113-22 (Loading Berth).

PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik, David Shteierman, Rabbi Goodfreund, Rabbi Chaim Weinberg, Rabbi Bluchok, Mordechai Biser, Yitzchok Perbis and others.

For Opposition: Stuart Klein, Marin Pope, Michael Gregorio, Morton Pupko, Pinny Sofier, Traci Schanke, David Kramer, Lina G. Kee and others.

ACTION OF THE BOARD – Laid over to September 12, 2006, at 1:30 P.M., for continued hearing.

64-06-BZ

APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.

SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of

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Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Melaney McMurray.

ACTION OF THE BOARD – Laid over to September
12, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 6:40 P.M.