BULLETIN

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CONTENTS

DOCKETS

MINUTES of Regular Meetings,
Tuesday, July 25, 2006

DOCKETS

New Case Filed Up to July 25, 2006

160-06-BZ
2199 Richmond Avenue, Corner of Richmond Avenue and Travis Avenue, Block 2361, Lot 1,7, Borough of **Staten Island, Community Board: 2**. Under 72-21 - To permit two (2) proposed commericial developments.

161-06-BZ
3349 Webster Avenue, Wester Avenue south of Gun Hill Road, Block 3355, Lot 121, Borough of **Bronx, Community Board: 7**. Under 72-21 - To permit the proposed residential development, low income housing.

162-06-A
2852 Faber Terrace, Intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of **Queens, Community Board: 14**. General City Law Section 35 - to permit the proposed otherwise as of right residential development in the partial bed of Faber Terrace

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163-06-BZ
72-36 43rd Avenue, 74th Street and Railroad Right-of Way, Block 1354, Lot 25 and 27, Borough of **Queens, Community Board: 4**. Under 72-21 - Proposed construction of two (2) three family dwellings on one zoning lot in a predominatly built-up area, with only one parking space in each building.

164-06-A
148 East 63rd Street, South side of East 63rd Street, 120' east of Park Avenue, Block 1397, Lot 48, Borough of **Manhattan, Community Board: 8**. Appeal of the June 30, 2006 Padlock Order issued by the Department of Buildings reccomending the closure of the premises at 148 East 63rd Street based on the illegal use of the basement , first, second and third floor.

165-06-A
2848 Farber Terrace, Intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of **Queens, Community Board: 14**. General City Law Section 35 - To permit the proposed otherwise as of right residential development in the partial bed of Faber Terrace.

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

SEPTEMBER 12, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 12, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

341-43-BZ
APPLICANT – Martyn & Don Weston, for 3319 Holding Corp., owner.
SUBJECT – Application June 8, 2006 - Extension of Term/Amendment filed pursuant to ZR§§11-411 & 11-412, to permit the continuance of a storage warehouse (UG 16) in a C8-2 & R5 zoning district for an additional 10 years. The application also seeks an amendment for the removal of an internal partition and the change from a chain link enclosure to a masonry enclosure of the accessory parking area.
PREMISES AFFECTED – 3319 Atlantic Avenue, northeast corner Euclid Avenue, Block 4145, Lots 1, 13, 23, Borough of Brooklyn.
COMMUNITY BOARD #5BK

595-44-BZ, Vol. II
APPLICANT – Law Office of Howard Goldman, for Cinzia 30 CPS, Inc.
SUBJECT – Application July 7, 2006 - Pursuant to ZR 11-413 to permit the change of use on the entire 15th floor (Penthouse) from UG12 Restaurant to a UG6 Office Space. Floors one thru fourteen are a UG6 non-resident doctors' offices. The premise is located in R-10H zoning district.
PREMISES AFFECTED – 30 Central Park South, south side of street, 320' east of Avenue of the Americas, Block 1274, Lot 1055, Borough of Manhattan.
COMMUNITY BOARD #5M

866-49-BZ, Vol. III
APPLICANT – Carl. A. Sulfaro, Esq., for 2912 Realty, LLC, owner.
SUBJECT – Application June 12, 2006 - Pursuant to ZR 11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district.
PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.
COMMUNITY BOARD #11Q

558-51-BZ
APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.
SUBJECT – Application April 19, 2006 - pursuant to ZR§11-411 to extend the term of a Automotive Service Station expiring December 21, 2006. The application does not seek any physical changes from the previous approval.
PREMISES AFFECTED – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69th Street, Block 1186, Lot 19, Borough of Queens.
COMMUNITY BOARD #3Q

23-04-BZ
APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.
SUBJECT – Application July 19, 2006 - Pursuant to ZR 73-11 & 73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq.ft.). The proposed plans are contrary to ZR 23-141(a) -floor area, open space; 23-48 - minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.
PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #14BK

APPEALS CALENDAR

34-06-A
APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner
SUBJECT – Application March 1, 2006 – proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.
PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269' north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.
COMMUNITY BOARD #7Q

93-06-A
APPLICANT – Sheldon Lobel, P.C., for Mei Hsien Peng, owner
SUBJECT – Application May 9, 2006 - Proposed construction of a 3 story + attic four family dwelling fronting on a unmapped street contrary to General City Law

Section 36 and does not have adequate perimeter street frontage as per Building Code 27-291. Premises is located within the R5 Zoning district.
PREMISES AFFECTED – 50-08 88th Street, westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of Queens.
COMMUNITY BOARD #4Q

120-06-A
APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.
SUBJECT – Application June 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1
PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.
COMMUNITY BOARD #14BK

120-06-A
APPLICANT – Eric Palatnik, P.C., for Harry & Brigitte Schalchter, owners.
SUBJECT – Application June 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Current zoning district is R4-1
PREMISES AFFECTED – 1427 East 17th Street, between Avenue N and Avenue O, Block 6755, Lot 91, Borough of Brooklyn.
COMMUNITY BOARD #14BK

SEPTEMBER 12, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 12, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

33-05-BZ
APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.
SUBJECT – Application February 24, 2005 - Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35; Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).
PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.
COMMUNITY BOARD #18BK

104-06-BZ
APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.
SUBJECT – Application May 23, 2006 - Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.
PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue "O", Block 7678, Lot 84, Borough of Brooklyn.
COMMUNITY BOARD # 14BK

106-06-BZ
APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker, owner.
SUBJECT – Application May 23, 2006 - Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1436 East 28th Street, west side

of East 28th Street, 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JULY 25, 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 9, 2006 as printed in the bulletin of May 19, 2006, Volume 91, No. 20. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

200-24-BZ
APPLICANT – Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.
SUBJECT – Application May 11, 2006 - Pursuant to Rules of Practice and Procedure to reopen and amend the resolution for the Extension of Time to Obtain a Certificate of Occupancy, for a bookstore and distribution, which expired on April 12, 2006.
PREMISES AFFECTED – 3030 Jerome Avenue, aka 3103 Villa Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of The Bronx.
COMMUNITY BOARD #7BX
APPEARANCES –
For Applicant: Stephen Ely.
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 reopening and an extension of time to obtain a certificate of occupancy for a prior grant, which expired on April 12, 2006; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in the *City Record*, and then to decision on July 25, 2006; and

WHEREAS, on May 25, 1924, under the subject calendar number, the Board permitted the construction of a storage garage at the subject premises; and

WHEREAS, on March 29, 1960, the Board reopened and amended the resolution to permit a change in use from storage garage to auto repair, for a term of ten years; said term was extended at various times; and

WHEREAS, on March 17, 2001, the Board legalized the change of use from automotive repair (Use Group 16) to a retail food store (Use Group 6) and to extend the term of the variance; and

WHEREAS, on November 26, 2002, the Board reopened and amended the resolution to permit a change of use from retail food store to a bookstore and to extend the time to complete construction and obtain a new certificate of occupancy; and

WHEREAS, most recently, on April 12, 2005, the Board amended the grant to permit an extension of time to obtain a certificate of occupancy, for the book store and distribution use, to expire on April 12, 2006; and

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

WHEREAS, the applicant states that DOB has approved the BSA-approved plans and that all permits except for the electrical work are issued; and

WHEREAS, further, the applicant states that the remaining work includes minor plumbing and interior finishing work; and

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

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on March 25, 1924, so that as amended this portion of the resolution shall read: "to permit an extension of the time to obtain a certificate of occupancy, for a period of one year from the date of this resolution to expire on July 25, 2007; *on condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 200608896)

Adopted by the Board of Standards and Appeals, July 25, 2006.

739-76-BZ
APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Co., owner; Peter Pan Games of Bayside, lessee.
SUBJECT – Application May 4, 2006 – Reopening for an extension of term of a special permit pursuant to ZR§73-03 to permit an existing shopping center, the conversion of a retail store to an amusement arcade.
PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES – None.
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 reopening and an extension of the term of the special permit which expired on April 10, 2006; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to July 25, 2006 for decision; and

WHEREAS, initially, Community Board 7, Queens, was in opposition to the application, citing concerns that the site did not provide access to restrooms and that patrons were using the restrooms at neighboring businesses; as discussed below, the Community Board later dropped its opposition; and

WHEREAS, on February 8, 1977, the Board granted an application permitting, in an existing shopping center, the conversion of a retail store to an amusement arcade for a term of one year; and

WHEREAS, at the time of the initial grant, the location of the arcade was 212-65 26th Avenue; in 1997, the Board permitted the relocation of the arcade to the subject premises; and

WHEREAS, the applicant met with the Community Board and agreed to place a sign indicating that there was a restroom at the site which could be accessed by asking the management for a key; and

WHEREAS, the Board noted that construction work being done at the mall, unrelated to the subject site, impedes the applicant's ability to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that DOB will adjust the old certificate of occupancy for the mall to reflect that the arcade is in compliance even if the entire mall is not; and

WHEREAS, the applicant currently seeks a one-year extension to the term of the special permit; and

WHEREAS, based upon the submitted evidence, the Board finds that the instant application is appropriate to grant, with conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals, *reopens and amends* the resolution, said resolution having been adopted on January 6, 1981, as later amended, 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 one year from April 10, 2006 expiring on April 10, 2007; *on condition* that the all work/on-site conditions shall substantially conform to drawings as filed with this application, marked 'January 19, 2005' - (3) sheets; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, expiring on April 10, 2007;

THAT a sign indicating that a key for the restroom is available from the manager shall be posted at the site;

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

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

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

THAT the operation of the arcade subject premises shall comply with the previously approved Board plans, and 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;

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. 401710430)

Adopted by the Board of Standards and Appeals, July 25, 2006.

132-97-BZ

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on- site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

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 reopening, and an amendment for an eating and drinking establishment to permit an extension of term of the special permit for onsite parking, which expired on March 3, 2003, and the legalization of a deck; and

WHEREAS, the applicant also brought a companion case under BSA Cal. No. 24-06-A, which requested the legalization of four parking spaces within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, the applicant subsequently withdrew this application; and

WHEREAS, a public hearing was held on this application on July 19, 2005, after due notice by publication in *The City Record*, with continued hearings on September 13, 2005, October 18, 2005, December 6, 2005, February 14, 2006, April 11, 2006, June 6, 2006 and July 11, 2006, and then to decision

on July 25, 2006; and

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

WHEREAS, Community Board 3, Staten Island and the Borough President recommended disapproval of this application citing concerns about parking and the permanent nature of the deck; and

WHEREAS, the site is located on the west side of Mansion Avenue, 94 ft. north of the corner formed by the intersection of Cleveland and Mansion Avenues; and

WHEREAS, the site is located within a C3 Special South Richmond (SRD) zoning district, has a lot area of 12,735 sq. ft., and is occupied by an existing eating and drinking establishment (Fiore Di Mare); and

WHEREAS, currently there are thirteen accessory parking spaces – 4 in the front and nine in the rear; however, the four in the front are not legal and will be removed; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-242, authorizing the change in use from a Use Group 14 fishing tackle shop to a Use Group 6 eating and drinking establishment, with no entertainment or dancing, an occupancy of less than 200 persons, and nine accessory parking spaces; and

WHEREAS, the applicant seeks to legalize a covered deck, which was constructed without DOB permits; and

WHEREAS, the applicant represents that this deck, which is located at the front of the building and accommodates additional restaurant seating was constructed in 2000, when under different ownership; and

WHEREAS, however, the Board does not give any weight to the applicant's claim that the illegal condition was in place at the time of purchase; and

WHEREAS, at hearing, the Board asked the applicant if the deck was necessary for the viability of the restaurant; and

WHEREAS, the Board expressed concern that the occupancy would increase and more customers would contribute to the parking problems noted by the community; and

WHEREAS, the applicant responded that the deck provides additional seasonal business and that it would be a hardship to remove it; and

WHEREAS, in response to the Board's concerns, the applicant agreed that the total of 15 tables would not increase when the deck is in use, but that the existing tables would be re-configured to allow for outside seating; and

WHEREAS, at hearing, the Board asked the applicant to describe the deck in more detail; and

WHEREAS, the applicant responded that the deck does not have heating or air-conditioning, and its use is therefore limited throughout the year; and

WHEREAS, further, the applicant agreed to not make the deck available year-round; and

WHEREAS, the Board asked the applicant if there were other measures that could be taken to reinforce the assertion that the deck was a seasonal addition to the restaurant; and

WHEREAS, at the Board's suggestion, the applicant agreed to remove the permanent roof over the deck and replace it with a retractable awning; and

WHEREAS, the applicant submitted revised plans illustrating the change to the roof; and

WHEREAS, the Board has reviewed the revised plans and is satisfied that the deck will only be used for seasonal use; and

WHEREAS, the Board also expressed concern about the amount of accessory parking, particularly because the four illegal parking spaces located at the front of the restaurant will be removed; and

WHEREAS, the applicant initially proposed relocating the four spaces at the front of the building to the attended lot at the rear; and

WHEREAS, upon review of the parking layout, the Board determined that the rear lot could not feasibly accommodate 13 spaces; and

WHEREAS, the Board asked the applicant if it was possible to secure additional parking offsite since the small lot at the rear could not accommodate more than the existing nine spaces; and

WHEREAS, in response, the applicant entered into a written agreement with Staten Island Yacht Sales to allow that four parking spaces at its site across the street be reserved for patrons of the subject restaurant; and

WHEREAS, based upon the above, the Board finds that the 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 March 3, 1998, 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 March 3, 2003, and to permit the legalization of the seasonal deck; *on condition* that all work and site conditions shall comply with drawings marked 'Received July 11, 2006'– (3) sheets and 'Received July 25, 2006'– (2) sheets; and *on further condition*:

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

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on March 3, 2008;

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 use of the deck shall be limited to the period of April 15 through October 15;

THAT the occupancy, including the use of the deck, shall be limited to 60 people at tables and 13 people at the bar;

THAT nine attended parking spaces shall be provided onsite, at the rear of the lot; and

THAT four offsite parking spaces shall be provided at State

Island Yacht Sales, per written agreement, that shall be effective for the entire term of the special permit;

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. 500754061)

Adopted by the Board of Standards and Appeals, July 25, 2006.

24-06-A

APPLICANT – Alan R. Gaines, Esq., for Deti Land, LLC, owner; Fiore Di Mare LLC, lessee.

SUBJECT – Application June 7, 2005 and January 3, 2006 – Extension of Term/Amendment/Waiver for an eating and drinking establishment with no entertainment or dancing and occupancy of less than 200 patrons, UG 6 located in a C-3 (SRD) zoning district. Proposed legalization of four on- site parking spaces for an eating and drinking establishment (Fiore Di Mare) located in the bed of a mapped street, is contrary to Section 35 of the General City Law.

PREMISES AFFECTED – 227 Mansion Avenue, Block 5206, Lot 26, Borough of Staten Island.

COMMUNITY BOARD# 3SI

APPEARANCES –

For Applicant: Joseph D. Manno, Esq.

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 25, 2006.

324-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Janine Realty, LLC, owner.

SUBJECT – Application December 8, 2005 – Amendment to a previously granted Variance ZR72-21 to allow the conversion of three floors in a commercial building to residential use.

PREMISES AFFECTED – 1077 Bay Street, Block 2825, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: John Rinesmith.

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 application is a request for a re-opening and an amendment to a previously granted variance, to permit the conversion of three floors from commercial to residential use; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006; and

WHEREAS, Community Board 1, Staten Island recommends approval of this application; and

WHEREAS, the subject site is a 63,460 sq. ft. lot located on the north side of Sylvaton Terrace between Bay and Edgewater Streets, and is within an M2-1 zoning district; and

WHEREAS, on February 4, 2003, the Board granted an application pursuant to ZR § 72-21, to permit the construction of a mixed-use development contrary to ZR § 42-00; and

WHEREAS, the grant permitted the construction of a new five-story, forty-unit residential building with commercial use in the cellar, the retrofit of an existing building to create a five-story office building, and a new three-story parking structure; and

WHEREAS, the applicant represents that, subsequent to the issuance of the variance, the property was sold and no construction has begun; and

WHEREAS, further, the applicant represents that construction has been halted as the viability of the project has been re-evaluated; and

WHEREAS, the applicant asserts that there is not enough demand for the commercial space to warrant the full conversion of the five-story building to office use; and

WHEREAS, the applicant has concluded that, by converting the top three floors of the existing building to residential use, it would still be possible to realize a reasonable return on the property; and

WHEREAS, thus, the applicant is requesting an amendment to the previously-granted variance to permit residential use on floors three, four, and five of the existing building, adding ten residential units; and

WHEREAS, the Board notes that the balance of the property will be developed in conformance with the BSA-approved plans and that the sole difference will be a reduction in the amount of commercial floor area at the site from 29,584 sq. ft. to 15,462 sq. ft. and the resultant increase in the residential floor area from 27,858 sq. ft. to 41, 950 sq. ft.; and

WHEREAS, thus, the commercial FAR will change from 0.47 to 0.25 and the residential will change from 0.44 to 0.66; and

WHEREAS, the applicant does not seek any other modifications; and

WHEREAS, the Board agrees that evidence in the record shows that the proposed commercial use of all five floors of the existing building has been unmarketable and that the conversion

of additional floor area for residential use makes the project viable; and

WHEREAS, the Board therefore concludes that the proposed conversion of the three floors is an acceptable modification that does not affect the prior findings that the original proposal was compatible with the neighborhood character and that the relief granted was the minimum necessary; and

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

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on February 4, 2003, so that as amended this portion of the resolution shall read: "to permit the conversion of the third through fifth floors of the existing five-story building in a M2-1 zoning district from commercial use to residential use; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received December 8, 2006'-(1) sheet, and 'Received May 18, 2006'-(6) sheets; and *on further condition*:

THAT the floor area and FAR parameters of the subject five-story office building shall be as follows: 15,462 sq. ft. of commercial floor area (0.25 FAR) and 41,950 sq. ft. of residential floor area (0.66 FAR);

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

THAT DOB shall review for compliance with all applicable light and air requirements and, for the required separation between commercial and residential uses;

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

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

(DOB Application No. 500457882)

Adopted by the Board of Standards and Appeals, July 25, 2006.

106-76-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Amerada Hess Corp., owner.

SUBJECT – Application May 2, 2006 – Pursuant to ZR 72-01 to reopen and amend the BSA resolution to construct a new one story accessory convenience store, replace the existing metal canopy, pumps and pump islands and to remove two curb cuts and replace with one curb cut. The premise is located in an R3-2 zoning district.

PREMISES AFFECTED – 129-15 North Conduit Avenue, northeast corner of 129th Street, Block 11863, Lot 12, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

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.

998-83-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Ldk Realty Inc., owner.

SUBJECT – Application April 10, 2006 – Reopening for an extension of term of variance permitting accessory parking to a eating and drinking establishment (UG-6) in an R3-2 zoning district, contrary to section 22-10 of the zoning resolution. The current term expired on April 10, 2004. Staten Island Community Board 2.

PREMISES AFFECTED – 2940/4 Victory Boulevard, south side of Victory Boulevard, 25.47' west of Saybrook Street, Block 2072, Lots 57, 65, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

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.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.

SUBJECT – Application January 26, 2005 – Extension of Term / Amendment / Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.

PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jeffrey Chester.

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

291-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Torah Academy High School, owner.

SUBJECT – Application May 9, 2006 - Extension of Time to complete construction of a Special Permit, Use Group 3 for a yeshiva (Torah Academy High School) which expired on April 9, 2006. The premise is located in an C8-2 zoning

district.
PREMISES AFFECTED – 2316-2324 Coney Island Avenue, Block 7112, Lots 9, 10, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Josh Rhinesmith.
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.

189-03-BZ
APPLICANT – Sheldon Lobel, P.C., for Bill Wolf Petroleum Corp., owner.
SUBJECT – Application June 14, 2006 – Extension of Time/Waiver to complete construction and obtain a Certificate of Occupancy for an automotive service station with an accessory convenience store which expired on October 21, 2005. The premise is located in a C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of 233rd Street and Bussing Avenue, block 4857, Lots 44, 41, Borough of The Bronx.
COMMUNITY BOARD #12BX
APPEARANCES –
For Applicant: Josh Rhinesmith.
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.

362-03-BZ
APPLICANT – Sheldon Lobel, P.C., for Reiss Realty Corporation, owner.
SUBJECT – Application June 1, 2006 – Extension of Time to obtain a Certificate of Occupancy for an accessory parking lot to a commercial use group which expired on May 11, 2006. The premise is located in an R8 zoning district.
PREMISES AFFECTED – 428 West 45th Street, south side of West 45th Street, between 9th and 10th Avenues, Block 1054, Lot 48, Borough of Manhattan.
COMMUNITY BOARD #4M
APPEARANCES –
For Applicant: Josh Rhinesmith.
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.

APPEALS CALENDAR

134-05-A
APPLICANT – Rothkrug, Rothkrug, Weinberg, Spector, LLP for Gaspare Colomone, owner.
SUBJECT – Application May 31, 2005 – Proposed construction of a three dwellings, which lies in the bed of a mapped street (67th Street) which is contrary to Section 35 of the General City Law.
PREMISES AFFECTED – 53-31 67th Street, 53-33 67th Street, and 67-02 53rd Road, Block 2403, Lot 117, 217, 17, Borough of Queens.
COMMUNITY BOARD #5Q
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, the decision of the Queens Borough Commissioner, dated May 6, 2005, acting on Department of Buildings Application Nos. 401389724, 401389706, and 401389715 reads, in pertinent part:

> "Respectfully request to have this folder for BSA stamped denied; building contrary to GCL 35."; and

WHEREAS, a public hearing was held on this application on May 9, 2006 after due notice by publication in the *City Record*, to continued hearing on June 6, 2006 and July 11, 2006, and then to decision on the July 25, 2006; and

WHEREAS, by letter dated, January 17, 2006 the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 25, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 28, 2005, the Department of Transportation (DOT) states that it has reviewed the above project and requests that a turnaround be provided at the dead end of 67th Street to improve traffic circulation; and

WHEREAS, by letter May 23, 2006, the applicant contends that compliance with DOT's recommendation would require the applicant to secure an easement from the adjacent property owner; and

WHEREAS, the Board accepts the applicant's proposal without the turnaround because the Fire Department is satisfied with the subject proposal and DOT does not have any plans to acquire the property; 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 May 6, 2005, acting on Department of Buildings Application Nos. 401389724, 401389706, and 401389715, 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 July 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 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 25, 2006.

354-05-BZY

APPLICANT – Cozen & O'Connor for Global 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 62 unit 11 story multiple dwelling under the prior Zoning R6. New Zoning District is R6B/ C2-3 as of November 16, 2005.

PREMISES AFFECTED – 182 15th Street, Brooklyn, south side of 15th Street, 320 feet west of 5th Avenue, Block 1047, Lot 22 Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Howard Hornstein.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the required foundation of a proposed eleven-story multiple dwelling, filed on behalf of the developer; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with a continued hearing on April 25, 2006; and

WHEREAS, on April 25, 2006, the hearing was closed and the application was scheduled for decision on June 13, 2006; and

WHEREAS, on June 13, 2006, the hearing was reopened for submission of further evidence; after this evidence was submitted and testimony was taken, the hearing was again closed and the application was re-scheduled for decision on July 25, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the application, stating that the foundation was not complete and that several stop work orders and violations were issued; and

WHEREAS, additionally, the South Park Slope Community Group and the Concerned Citizens of Greenwood Heights opposed the application, stating that excavation was not complete, that work was done after hours, and that demolition occurred without a mechanical demolition permit; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, Public Advocate Betsy Gotbaum, and City Councilmember Sara M. Gonzalez, also provided testimony in opposition to the application; and

WHEREAS, additionally, a group of neighbors to the site opposed the application, and were represented by counsel (hereinafter, "Opposition Counsel"); and

WHEREAS, the Board notes that some of the testimony provided by the above individuals and entities related directly to the application and the supporting evidence submitted by the applicant, as well as the technical findings set forth at ZR § 11-331; and

WHEREAS, some of the opposition testimony, however, reflected a general objection to any development on the site that does not comply with the new zoning district parameters (discussed below); and

WHEREAS, the Board understands that many community residents were particularly concerned about the size of the proposed building; and

WHEREAS, while testimony that reflected this sentiment was accepted into the record, the Board's determination as reflected herein is guided by applicable ZR provisions and certain legal principles, and was based on consideration of the legal claims made by the developer as well as the opposition's responses to these claims; and

WHEREAS, the subject site is located on the south side of 15th Street, 320 feet west of Fifth Avenue; and

WHEREAS, the subject site has a total lot area of 25,281 sq. ft.; and

WHEREAS, the site is proposed to be developed with an eleven-story, 62-unit multiple dwelling (hereinafter, the "Proposed Development"); and

WHEREAS, on July 20, 2004, the developer filed an application with the Department of Buildings (DOB) for a New Building permit, under Application No. 301791318-01-NB, for the Proposed Development; DOB subsequently approved this application on December 15, 2004; and

WHEREAS, on July 13, 2005, DOB issued demolition permits (301976556-01-DM and 301976565-01-DM), a construction fence permit (301976556-01-EQ-FN) and a shed permit (301976556-02-EQ-SH); and

WHEREAS, on September 12, 2005, DOB issued permits for a construction fence (301791318-01-EQ-FN) and a sidewalk shed (301791318-02-EQ-SH); and

WHEREAS, also on September 12, 2005, DOB approved a post-approval amendment to the New Building Permit application, and then issued New Building Permit No. 301791318-01-NB (hereinafter, the "NB Permit"); and

WHEREAS, on October 4, 2005, subsequent to a special audit review of the NB Permit, DOB issued a letter to the developer providing notice of its intent to revoke the NB Permit based on the objections raised during the audit; a stop work order (the "SWO") was also issued on this date; and

WHEREAS, on November 11, 2005, DOB rescinded its notice of intent to revoke, finding that the objections were successfully resolved by the developer; the SWO was also lifted; and

WHEREAS, on November 14, 2005, DOB formally approved the revised plans that responded to the objections; and

WHEREAS, Opposition Counsel contested the validity of the NB Permit, but DOB confirmed that it was lawful when issued and in effect from September 12, 2005 (when it was initially issued) until October 4, 2005 (when the SWO was issued), and then from November 11, 2005 (when the intent to revoke was rescinded) until November 16, 2005 (the date of the rezoning); and

WHEREAS, when the NB Permit was issued and when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complied with the R6 zoning in terms of height and floor area; and

WHEREAS, however, as noted above, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Park Slope South rezoning proposal, which changed the site's zoning from R6 to R6B; and

WHEREAS, the Proposed Development would not comply with the new R6B district provisions concerning height and floor area; and

WHEREAS, specifically, the Proposed Development has a height of 131 feet (50 feet is the maximum permitted in the R6B zoning district) and an FAR of 2.38 (2.0 is the maximum permitted); and

WHEREAS, because the Proposed Development violated these provisions of the R6B zoning and work on the required foundation was not completed by the Rezoning Date, the NB Permit lapsed by operation of law; and

WHEREAS, the developer of the Proposed Development now applies to the Board to renew the NB Permit pursuant to ZR § 11-331, so that the Proposed Development may be fully constructed under the prior R6 zoning; and

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

WHEREAS, the developer asserts that excavation was completed and that the required foundation was nearly complete as of November 15, 2005, one day prior to the Rezoning Date; and

WHEREAS, after the subject application had been filed, DOB informed the Board that it had issued a violation for mechanical demolition without the required permit and that this fact had not been disclosed by the developer in its initial application papers; and

WHEREAS, the violation (ECB Violation Number 34487161J), issued on August 23, 2005, noted, in sum and substance, that mechanical demolition was occurring at the rear of the site with a Volvo excavator, that no safety zone was provided, and that DOB records did not reflect a mechanical demolition permit; and

WHEREAS, as noted above, the developer had permits to perform demolition, but these permits only covered manual demolition, not mechanical; and

WHEREAS, during the course of the hearing process, DOB provided testimony that mechanical demolition is more hazardous than manual demolition and therefore requires a separate permit; and

WHEREAS, accordingly, the demolition permits obtained by the developer did not cover the use of the excavator to take down buildings (though it could be on-site for debris clean-up); and

WHEREAS, at the first hearing on this matter, conducted on March 29, 2006, the developer conceded that DOB issued the above-cited violation for mechanical demolition without a permit; and

WHEREAS, however, the developer claimed that mechanical demolition occurred on only one day (August 23, 2005, the day the violation was issued) for a four hour period, and then the excavator was taken off-site; and

WHEREAS, the developer concluded that no time advantage was gained from the single day of mechanical demolition; and

WHEREAS, at the next hearing, conducted on April 25,

2006, the developer again stated that mechanical demolition only occurred for between two and four hours on August 23, 2005; that mechanical demolition was not reinitiated; and that the rest of the demolition was done under the issued demolition permits for manual demolition; and

WHEREAS, in response to an inquiry about the mechanical demolition from the Board, the developer made the following statement: "But here, somebody tried to do something, they did it wrong, they got caught, they stopped, and it was done right, and that's what happened"; and

WHEREAS, based on these representations, made over the course of two hearings, the Board accepted the developer's position that mechanical demolition only occurred on one day, and then proceeded to an analysis of whether excavation was complete and whether substantial progress had been made on the required foundation; and

WHEREAS, however, the Board was later informed that there was evidence that purportedly showed that mechanical demolition was not limited to one day, as claimed by the developer, but actually occurred over the span of approximately ten business days, from August 22, 2005 until September 10, 2005; and

WHEREAS, the Board scheduled a subsequent hearing on June 13, 2006 for review of this evidence, which was in the form of video footage, taken by certain neighbors of the subject site; and

WHEREAS, the video shown at this hearing by Opposition Counsel was a compilation of various individual videos taken by different neighbors; some of the separate videos included a date stamp, though some did not; and

WHEREAS, at the request of the Board, Opposition Counsel later submitted affidavits from the individuals who shot the video, attesting to the dates on which the video was taken; and

WHEREAS, further, DOB reviewed the video footage, and opined that mechanical demolition was depicted on certain occasions; specifically, DOB stated that mechanical demolition appears in footage taken on August 22, August 23, August 24, August 30, September 6, and September 8, 2005; and

WHEREAS, Opposition Counsel argues that a significant time advantage was gained by the developer through the illegal mechanical demolition, and that the Board should discount a certain percentage of the excavation and foundation work as a result; and

WHEREAS, the Board reviewed the video evidence and agrees that illegal mechanical demolition occurred on more than one day, contrary to the developer's prior assertions; and

WHEREAS, further, in light of this evidence, the developer concedes that mechanical demolition occurred on days other than August 23, 2005; and

WHEREAS, however, the developer contends: (1) that the Board can not consider the illegal demolition; and (2) that even if the Board were to consider the illegal demolition and subtract the time advantage gained because of it, the deduction would not be so significant that a favorable determination under ZR § 11-331 could not be rendered; and

WHEREAS, in support of the first contention, the developer argues that ZR § 11-331 does not give the Board any express authority to consider the effect, if any, of illegal demolition; and

WHEREAS, specifically, the developer asserts that the plain language of ZR § 11-331 limits the scope of the Board's inquiry to a technical determination as to the completion of excavation and the degree of progress on foundation construction; and

WHEREAS, the Board questions whether the plain language of this section functions as, or should function as, a shield against Board consideration of any and all illegal pre-excavation development activity when a developer is attempting to vest a construction project; and

WHEREAS, this is especially true where, as here, impermissible development activity may have a direct nexus to the ability to complete excavation and make substantial progress on foundations prior to a zoning change; and

WHEREAS, additionally, if the Board, when hearing applications under ZR § 11-331, was compelled to disregard the impermissible acts of developers merely because they occurred pre-excavation, it would mean that developers would have an incentive to ignore, once a building permit is obtained, other construction-related laws, rules and regulations during site preparation or demolition, safety related or otherwise, if such requirements were time-consuming; the only possible penalty would be DOB enforcement action, a risk developers might be willing to assume given that it would not negatively affect an application under ZR § 11-331; and

WHEREAS, to avoid such gamesmanship, the Board finds that it must have the latitude to evaluate on a case by case basis the effect, if any, that impermissible pre-excavation work at the site had on the ability to meet the technical thresholds set forth at ZR § 11-331; and

WHEREAS, further, the Board disagrees that it is bound solely and completely by the language of ZR § 11-331 when reviewing applications made under this section; and

WHEREAS, the Board's authority to renew building permits pursuant to ZR § 11-331 is conferred by ZR § 72-01(c), which references ZR § 73-01; and

WHEREAS, ZR § 73-01, in sum and substance, provides that, in harmony with the general purpose and intent of the ZR, the Board may grant renewals under ZR §§ 11-31 to 11-33; this includes ZR § 11-331; and

WHEREAS, the preamble of the ZR sets forth its purpose and intent, and reads, in pertinent part: "This Resolution is adopted in order to promote and protect public health, safety and general welfare."; and

WHEREAS, thus, the Board can only grant a renewal pursuant to ZR § 11-331 if doing so is in harmony with this purpose and intent; an absolute prohibition on Board consideration of pre-excavation activities that are unlawful and therefore potentially unsafe is contrary to the stated intent of the ZR, since, as discussed above, an incentive to engage in such activities in order to complete excavation and progress on foundation work would be created; and

WHEREAS, the Board concludes that the above-cited ZR provisions provide it with the basis to review concerns related to pre-construction activity notwithstanding the language of ZR § 11-331; and

WHEREAS, however, the Board notes that it is not opining that all violations of Building Code or other construction-related laws before or during excavation and foundation work would necessarily be relevant in an application made under ZR § 11-331; the Board is aware that major construction projects present ample opportunity for enforcement action by DOB, and that violations are issued in response to occurrences that may be unavoidable or are minor in nature, or that may not have any bearing on how quickly construction will progress; and

WHEREAS, also in support of the first contention, the developer states that the Board has, in other applications, ignored illegal demolition and the resulting potential time advantage; and

WHEREAS, specifically, the developer cites to two prior Board decisions on applications made under ZR § 11-331: (1) 166-05-BZY, concerning 1669/71 West 10th Street, Brooklyn; and (2) 168-05-BZY, concerning 6422 Bay Parkway, Brooklyn; and

WHEREAS, however, these cases are factually dissimilar from the instant matter; and

WHEREAS, in 166-05-BZY, demolition work proceeded without a permit and a violation was issued by DOB; however, the illegal demolition occurred, and was cited by DOB, approximately 14 months prior to the commencement of excavation, thus eliminating the potential that a time advantage was obtained; and

WHEREAS, in 168-05-BZY, the demolition work was in fact permitted; DOB merely issued a violation for failure to remove windows in the building being demolished; and

WHEREAS, additionally, as noted by the developer, the Board was not made aware of the DOB violations in either of these two cases, and did not deliberate upon or reference them in its resolutions; and

WHEREAS, the Board does not express an opinion as to whether the outcome would have changed in either case had it been aware of the violations, but observes because it did not even know of them, neither case can stand for the proposition that the Board has previously ruled that illegal demolition is not a relevant consideration under any circumstances in this type of application; and

WHEREAS, in sum, the Board finds that the developer's first contention is without merit; and

WHEREAS, in support of the second contention, the developer claims that any time advantage gained from the illegal mechanical demolition was minimal and would not affect a determination under ZR § 11-331 that excavation had been completed and substantial progress was made on foundations as of the Rezoning Date; and

WHEREAS, in support of this argument, the developer has submitted testimony from a construction manager, which suggests that, at most, only six days would have been lost from the construction schedule; and

WHEREAS, Opposition Counsel, citing to a report prepared by its own expert, suggests that anywhere from 9 to 14 working days would have been lost; and

WHEREAS, DOB likewise cited to its expert, and notes that if demolition had been performed by hand, it would have taken so long that excavation could not have commenced until after the SWO was in effect (October 4, 2005); thus, DOB concludes that excavation and foundation work only could have been performed on three business days (from November 11, 2005, the date that the SWO was rescinded, until the Rezoning Date); and

WHEREAS, the developer suggests that all of these time estimates, including that of its construction manager, are essentially guesses, and that it would be arbitrary for this Board to favor one estimate over another without some basis; and

WHEREAS, leaving aside the contentions of the various experts, the Board observes that there is a nexus between the impermissible mechanical demolition and the ability to complete excavation and make substantial progress on foundations; and

WHEREAS, moreover, illegal mechanical demolition occurred even after DOB issued a violation against it; and

WHEREAS, a logical conclusion is that mechanical demolition continued at the site because it assisted the developer in completing the demolition more quickly than by hand demolition alone, and enabled the commencement of excavation and foundation construction at an earlier date; and

WHEREAS, nevertheless, the Board agrees that given the conflicting expert testimony, it is very difficult to fashion a precise and reasonable deduction from the total development time; and

WHEREAS, for this reason, the Board declines to base its determination herein on the supposition that excavation would not have been completed or substantial progress would not have been made by the Rezoning Date but for the illegal mechanical demolition; and

WHEREAS, instead, the Board's denial of the instant application is predicated on serious concerns about the credibility of the developer; and

WHEREAS, as discussed above, the developer stated without hesitation at the first and second hearings that illegal mechanical demolition occurred on only one day - when this was not the case – and inappropriately minimized the importance of the mechanical demolition on this basis; and

WHEREAS, the Board cannot tolerate such a significant pattern of misrepresentation, especially where so much of the Board's deliberation on an application for the right to continue construction under ZR § 11-311 depends on its confidence in the accuracy of the information provided by the developer; and

WHEREAS, it is a particular concern that the misrepresentations concern a fact that has a fundamental bearing on the Board's technical analysis; as noted above, demolition occurred immediately before excavation commenced; thus, any time advantage gained during demolition has a direct relationship to the completion of excavation and the degree of

foundation construction; and

WHEREAS, forthrightness on the part of the developer is thus crucial to the Board's understanding of how, and to what extent, work progressed prior to the rezoning; unfortunately, here, the developer was less than candid; and

WHEREAS, further, the Board observes that though the developer ultimately conceded that mechanical demolition occurred on days other than August 23, 2005, no explanation of the earlier misrepresentations was subsequently offered; and

WHEREAS, in sum, the Board finds that the credibility of the developer in the instant matter is significantly and irretrievably compromised such that a favorable determination on the application is not warranted; and

WHEREAS, the Board notes that the developer's misrepresentations during the administrative hearing process on this application, even though not made under oath, provide an independent grounds on which the Board may deny the application (See e.g. Holy Spirit Assoc. v. Rosenfeld, 91 A.D.2d 190 (2nd Dep't, 1983); Ostorff v. Sacks, 64 A.D.2d 708 (2nd Dep't, 1978; Pioneer-Evans Co. v. Garvin, 191 A.D.2d 1026 (4th Dep't, 1993)); and

WHEREAS, because the Board finds that the application may be appropriately denied on this basis, it declines to render a determination on the technical findings set forth at ZR § 11-331, or on other issues raised by Opposition Counsel.

Therefore it is Resolved that this application to renew Permit No. 301791318-01-NB pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, July 25, 2006.

364-05-A & 365-05-A
APPLICANT – Sheldon Lobel, P.C., for Hamida Realty, Inc., owner.
SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.
PREMISES AFFECTED – 87-30 and 87-32 167th Street, 252' north of the corner formed by the intersection of Hillside Avenue and 167th Street, Block 9838, Lots 114 and 116, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Jordan Most.
For Administration: Janine Gaylard.
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.

63-06-A
APPLICANT – Sheldon Lobel, P.C.
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES – None.

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

81-06-A
APPLICANT – Whitney Schmidt, Esq.
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES – None.

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

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 25, 2006
1:30 P.M.

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

ZONING CALENDAR

119-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Sam Malamud, owner.
SUBJECT – Application May 16, 2005 – under Z.R. §72-21 to permit the proposed enlargement to an existing one and two story warehouse building, with an accessory office, Use Group 16, located in a C4-3 and R6 zoning district, which does not comply with the zoning requirements for floor area,

floor area ratio, perimeter wall height, parking and loading berths, is contrary to Z.R. §52-41, §33-122, §33-432, §36-21 and §36-62.
PREMISES AFFECTED – 834 Sterling Place, south side, 80' west of Nostrand Avenue, Block 1247, Lot 30, Borough of Brooklyn.
COMMUNITY BOARD #8BK
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 25, 2006.

334-05-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for The Whitney Museum of American Art, owner.
SUBJECT – Application November 23, 2005 – Zoning Variance (use & bulk) pursuant to Z.R. §72-21 to facilitate the expansion of an existing museum complex including the construction of a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to Z.R. §§ 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.
PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Michael Sillerman.
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 Manhattan Borough Commissioner, dated November 8, 2005, acting on Department of Buildings Application No. 104289146, reads, in pertinent part:

"1. New development on portion of zoning lot located within C5-1(MP) zoning district does not comply with mandatory street wall and setback requirements along Madison Avenue and East 74th Street, contrary to Zoning Resolution Section 99-051.
2. New development on portion of zoning lot located within C5-1(MP) zoning district does not contain required street wall recesses along Madison Avenue frontage, contrary to Zoning Resolution Section 99-052(a).
3. Top story of new development on portion of zoning lot located within C5-1(MP) zoning district, which is located more than 170 feet above curb level, has gross area that exceeds 80 percent of the gross area of the story below it, contrary to Zoning Resolution Section 99-054(a).
4. New development on portion of zoning lot located in Midblock Transition Portion of C5-1 (MP) zoning district penetrates applicable limiting plane, contrary to Zoning Resolution Section 99-054(b).
5. New development on portion of zoning lot located in R8B/LH-1A zoning district has a height in excess of 60 feet above curb level, contrary to Zoning Resolution Section 24-591.
6. New development on portion of zoning lot located within C5-1(MP) zoning district does not contain Use Group MP commercial uses in at least 75 percent of the ground level building frontage along Madison Avenue, contrary to Zoning Resolution Section 99-03.
7. New development on portion of zoning lot located within C5-1(MP) zoning district does not provide sidewalk trees at maximum intervals of 25 feet, contrary to Zoning Resolution Section 99-06."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District (the "Special District") and partially within an R8B(LH-1A) district, the proposed construction of a nine-story addition to the primary building (hereinafter, the "Breuer Building") of the Whitney Museum of American Art (hereinafter, the "Whitney"), that does not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and street trees, contrary to ZR §§ 99-051, 99-052(a), 99-054(a) and (b), 24-591, 99-03, and 99-06; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, with a continued hearing on June 20, 2005, and then to decision on July 25, 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 8, Manhattan, recommends approval of this application; and

WHEREAS, numerous other entities and individuals also supported the application; and

WHEREAS, however, some area residents and other individuals opposed the application; and

WHEREAS, additionally, a group of neighbors represented by counsel, Coalition of Concerned Whitney Neighbors (hereinafter, the "Neighbors"), also appeared at

hearing, and made submissions into the record in opposition to the application; the arguments made in opposition by the Neighbors related to the required findings for a variance, as well as other items, and are addressed below in a separate portion of the resolution; and

WHEREAS, the site has been before the Board previously on two separate occasions: (1) on April 7, 1964, the Board, under Cal. No. 42-64-BZ, granted variances for height and setback, loading berth, and rear yard in connection with the construction of the Breuer Building; and (2) on June 23, 1964, the Board, under Cal. No. 442-64-A, granted an appeal from a decision of the Department of Buildings, which permitted the use of electro-magnetic door holders on several of the Whitney's fire doors; and

WHEREAS, the subject zoning lot on which the Whitney is located consists of Lots 21, 22, 23, 24, 25 and 50 within Block 1389 (hereinafter, the "Whitney site" or the "site"); and

WHEREAS, Block 1839 is bounded by Madison Avenue, Park Avenue, East 74th Street and East 75th Street; the Whitney site is located on the western portion of the block; and

WHEREAS, the site has a total lot area of 25,541 square feet, with 204.33 feet of frontage along Madison Avenue and 125 feet of frontage along both East 74th Street and East 75th Street; and

WHEREAS, the portion of the site that extends 100 feet east of Madison Avenue is located in a C5-1 zoning district and also lies within the Special District; the remainder of the site is located within an R8B(LH-1A) district; and

WHEREAS, the site is also located within the Upper East Side Historic District (the "UESHD"); and

WHEREAS, the site is currently occupied by the following buildings: (1) the Breuer Building, at 945 Madison Avenue, which is a five-story structure, with a height of 97 feet, 8 inches and 60,890 square feet of floor area, and which currently serves as the primary museum space; (2) a 20 ft. wide, 57'-2" high brownstone at 937 Madison Avenue; (3) a 20 ft. wide, 57'-2" high brownstone at 943 Madison Avenue; (3) a 40 ft. wide, 57'-2" high brownstone at 933/35 Madison Avenue; (4) another 40 ft. wide, 57'-2" high brownstone at 939/41 Madison Avenue; and (5) a combined structure at 31-33 East 74th Street, with a height of 69'-4"; and

WHEREAS, all of the afore-mentioned buildings, with the exception of the building at 943 Madison Avenue, are considered by the City's Landmarks Preservation Commission (the "LPC") to be contributing buildings to the UESHD; and

WHEREAS, the brownstone at 943 Madison Avenue, since it is non-contributing, was approved by LPC to be demolished; and

WHEREAS, the proposed addition is a nine-story structure that will rise from the interior of the site, directly to the south of the Breuer Building and behind the brownstones (hereinafter, the "Enlargement"); and

WHEREAS, the applicant states that the Enlargement will have a width of 74 feet, a depth of 70 feet and an overall height of 178 feet; it will set back 30 feet from the Madison Avenue street line and 17 feet from the East 74th Street line; and

WHEREAS, the Enlargement and the Breuer Building will be connected at the location of pre-existing knock out panels, located on most of the Breuer Building's floors in the center of its south wall; and

WHEREAS, further, the slot between the two structures will contain a series of glass and steel enclosed bridges that provide access between the structures at the locations of the knock-out panels; and

WHEREAS, the Enlargement will contain the following specific uses: a public lobby or "piazza," along with ticketing, coat check and security facilities at the ground level; five full floors of new exhibition space, an auditorium, a library and staff offices; and

WHEREAS, the Breuer Building will also be improved with: (1) a two-story addition on the roof, replacing an existing two-story mechanical plant; and (2) a three-story addition constructed atop a small two-story wing located at the rear of the building; and

WHEREAS, additionally, a one-story enlargement, housing additional office space, will be constructed at the top of the building at 33 East 74th Street; and

WHEREAS, finally, the applicant proposes a mechanized steel crane to be located near the top of the Enlargement, consisting of a mast and a boom arm; the mast will be about 12 inches in diameter and 32 feet tall; the boom arm will consist of a tapered pipe section with a diameter of between 6 and 12 inches and a total length of 85 feet; and

WHEREAS, because the site is within the UESHD, any development on the Whitney Site must be first approved by the LPC; and

WHEREAS, accordingly, the applicant sought approval from the LPC for the Enlargement and the other modifications; LPC reviewed the proposal and issued a Certificate of Appropriateness on January 5, 2006 (the "C of A"); and

WHEREAS, the applicant notes that the position of the Enlargement in the interior of the site will preserve the appearance of the brownstones as separate functional buildings, as required by the LPC; and

WHEREAS, however, the applicant notes that the design and location of the Enlargement as approved by LPC does not comply with the above-cited zoning parameters; and

WHEREAS, thus, the majority of the variances are required to enable the Whitney to construct an enlargement that meets its programmatic needs while complying with the LPC's mandate that any development of the site preserve each of the contributing historic buildings within the site and be appropriate to the subject historic district; one of the waivers (that relating to street trees) relates primarily to existing conditions on the sidewalks surrounding the Whitney site and

WHEREAS, as to these programmatic needs, the applicant represents that the Whitney is a non-profit educational corporation, and its primary mission is to collect, exhibit, preserve, research and interpret the best of 20th and 21st Century American art; and

WHEREAS, in addition to exhibitions of its permanent collection and new works, the Whitney also has a film and video program, and an education program, directed towards students, scholars, and the general public; and

WHEREAS, however, the applicant states that the Whitney has grown significantly since construction of the Breuer Building, and that more space for its various exhibitions and programs is needed; and

WHEREAS, specifically, the applicant notes the need for additional exhibition space, citing to the Breuer Building's limited 32,852 square feet of gallery space, which is used both for the display of works from the permanent collection and for special exhibitions; and

WHEREAS, the applicant states that some of the space within the Breuer Building that was originally designed as gallery space has been converted to other functions, and that the brownstones are not adaptable to additional exhibition space; and

WHEREAS, the applicant notes that only approximately one percent of the Whitney's permanent collection can be shown at any one time; and

WHEREAS, the applicant also notes that the only space within the Breuer Building that is available to showcase large works of sculpture measures 2,463 square feet, which is insufficiently small; and

WHEREAS, the applicant observes that there is not enough space for all of the Whitney's other programs and support functions, such as its library, its art conservation program, and its offices (currently located primarily in the brownstones); and

WHEREAS, additionally, the applicant observes that the Whitney's East 75th Street loading dock is too shallow to permit off-street loading and unloading of artworks by larger trucks; consequently, much of the loading and unloading at the Whitney is carried on at the main entrance on Madison Avenue, which is inefficient and raises security and liability concerns; and

WHEREAS, finally, the applicant states that the new entrance will alleviate the current cramped conditions found at the entrance and lobby area within the Breuer Building, and improve internal circulation; and

WHEREAS, in its initial submission, the applicant discussed the need for the various waivers as such need arises from the LPC-imposed requirements, the stated programmatic needs, a combination thereof, or actual unique physical conditions; and

WHEREAS, as to ZR § 99-051, the applicant states that within an historic district, this provision would require that any new building along the Madison Avenue frontage of the Whitney site would have to be located on the Madison Avenue street line up to a height of at least 97 feet, 8 inches, which is the street wall height of the Breuer Building; and

WHEREAS, this would mean that the Enlargement would not rise in the center of the site, as proposed, but would tower directly over the brownstones on the street; and

WHEREAS, the applicant states that the Enlargement, in order to comply with the LPC's requirement that all of the contributing buildings be preserved as distinct, functional structures, will instead be located at the interior of the Whitney site, setting back 30 feet from the Madison Avenue street-line and 17 feet from the East 74th Street street-line; and

WHEREAS, the applicant states that while this positioning of the Enlargement will allow significant portions of the contributing brownstone structures to be retained and restored or rebuilt, and will allow them to be seen as independent structures, the street wall requirement can not be met; and

WHEREAS, the applicant further states that if the Enlargement complied with this street wall requirement, the contributing brownstones would have to be either demolished or reduced to only their facades; and

WHEREAS, the applicant notes that such a scenario would not likely be approved by the LPC; and

WHEREAS, the applicant notes that further non-compliance with the requirements of Section 99-051 will result from the demolition of the non-contributing brownstone at 943 Madison Avenue and the demolition of a non-original two-story addition to the building at 933 Madison Avenue; and

WHEREAS, the applicant notes that the demolition of 943 Madison will better reveal the 10-foot wide slot that will separate the Breuer Building and the Enlargement, but will result in additional non-compliance with the street wall requirement of Section 99-051(a); and

WHEREAS, the applicant claims that this separation is necessary in order to preserve the separate massing and identity of the Breuer Building, ensuring that is remains an independent contributing building to the UESHD, like the contributing brownstones; and

WHEREAS, the removal of the two-story addition will allow for visual access between East 74th Street and the new "piazza" to be located in the ground level of the Enlargement, but will create further non-compliance with the 60-foot street wall requirement of Section 99-051(b); and

WHEREAS, finally, the applicant notes that the enclosed stairway extending from the south façade of the Enlargement will create non-compliance with the requirement set forth in ZR § 99-051(b) that, above a height of 60 feet, a building shall set back at least 15 feet from the street line of a narrow street such as East 74th Street; and

WHEREAS, the applicant claims that the stairway increases the amount of usable space in the Enlargement and provides the requisite secondary egress path to the upper level of the tower; and

WHEREAS, the applicant also notes that the stairway's location is dictated by the LPC-imposed siting of the Enlargement; and

WHEREAS, the applicant concludes that this encroachment on the required setback along East 74th Street is clearly necessary to meet the programmatic and design imperatives of the Enlargement; and

WHEREAS, as to ZR § 99-052(a), the applicant notes that this section normally requires specified recesses in the Madison Avenue street walls of buildings located within the UESHD, in order to create articulation within the mandated

street wall envelope; and

WHEREAS, specifically, this section requires that, within the base of the Madison Avenue frontage, above a height of 20 feet or the second story, whichever is less, at least 25 percent of the length of the street wall must be recessed from the street line to a depth of at least 5 feet; further, above the base, at least 20 percent of the length of the street wall shall be recessed at least 5 feet.

WHEREAS, the applicant states that the Enlargement does not comply with this provision because the brownstones must be preserved as per LPC, as discussed above, and because such articulation would result in a significant loss of usable space for museum functions; and

WHEREAS, as to ZR § 99-054(a), the applicant states that this section requires that the gross area of any story located more than 170 feet above curb level shall not exceed 80 percent of the gross area of the story directly below it; and

WHEREAS, the applicant states that although the ceiling of the ninth story lies less than 170 feet above curb level, the roof above this story will reach a height of 178 feet above curb level; this ninth story will have the same gross area as the stories below it, contrary to this provision; and

WHEREAS, the applicant notes that the siting of the tower constrains the width and depth of the Enlargement and that the height does not reach the maximum; thus, each floorplate within the tower must be maximized in order to provide for sufficient space to meet the Whitney's programmatic needs; and

WHEREAS, as to ZR § 99-054(b), the applicant notes that this section is applicable to the portion of the site located between 70 feet and 100 feet from the Madison Avenue street line; and

WHEREAS, the applicant states that within this "Midblock Transition Portion," a new development or enlargement shall not penetrate an imaginary plane that begins 70 feet from Madison Avenue at a height of 120 feet above curb level and descends to a height of 80 feet above curb level at a distance of 100 feet from Madison Avenue; and

WHEREAS, the Enlargement does not comply because it sets back 30 feet from the Madison Avenue street line; thus, the rear portion lies within the Midblock Transition Portion and penetrates the applicable limiting plane; and

WHEREAS, again, the applicant explains that the LPC-imposed siting of the building in the interior of the site creates the need for this waiver; and

WHEREAS, the applicant further explains that if the Enlargement complied with both the Madison Avenue setback provision and the Midblock Transition plane provision, the resulting floor plates would be too small to meet the Whitney's programmatic needs; and

WHEREAS, the enlargement of the Breuer building also penetrates the Midblock Transition plane; and

WHEREAS, the applicant explains that this enlargement will provide gallery space; the gallery space must have sufficient floor-to-ceiling heights, which results in the penetration; and

WHEREAS, as to ZR § 24-591, which applies to the easternmost 25 feet of the Whitney site, located within an R8B/LH-1A zoning district, the applicant states that this provision provides that the maximum height of a building is 60 feet above curb level; and

WHEREAS, the applicant notes that several crucial elements of the project violate this provision: (1) the one-story addition to the currently 69-ft. high building at 33 East 74th Street, necessary for additional office space; (2) the enlargement of the Breuer Building's small two-story element located adjacent to the Whitney site's easterly lot line, which will rise to five-stories in order to match the existing height of the rest of the Breuer Building, thereby providing larger, more flexible floor plates and will maximize the amount of essential exhibition space available within the building; and (3) a portion of the new rooftop addition to the Breuer Building within the R8B/LH-1A portion of the site, which, as discussed above, is needed for gallery space; and

WHEREAS, at hearing, the Board asked if the one-story addition to the building at 33 East 74th Street was absolutely necessary, and further asked if the floor space it creates could be relocated; and

WHEREAS, the applicant made a separate response to this inquiry, and stated that the administrative floor space is needed by the Whitney and it will be ideally situated in close proximity to the other administrative space located in the building; and

WHEREAS, the applicant states that the available space in the remainder of Enlargement is fully utilized and, consequently, the administrative space provided by the addition to 33 East 74th cannot be relocated without displacing other vital programmatic uses; and

WHEREAS, as to ZR § 99-03, the applicant states that this provision requires that, within the Special District, retail uses listed in Use Group MP shall occupy at least 75 percent of the Madison Avenue ground level frontage of a zoning lot; and

WHEREAS, the applicant notes that the site has approximately 204 feet of Madison Avenue frontage, with the Breuer Building occupying 104 feet of this frontage and the brownstones occupying the rest; and

WHEREAS, the applicant states that the Breuer Building, which was constructed before the adoption of the Special District, has never contained any ground level retail uses, and will remain lawfully non-conforming in this respect; and

WHEREAS, however, the brownstones do contain some MP uses, and thus are subject to this provision; and

WHEREAS, the applicant states that it is anticipated that one or more portions of the ground level space in the remaining brownstones will be used for museum purposes; and

WHEREAS, initially, the applicant stated that some degree of retail was proposed, but the amount was not specified; thus, the applicant requested a full waiver of this provision; and

WHEREAS, subsequently, during the hearing process, the Board inquired whether this waiver was necessary and also whether the frontage could be occupied by the museum

restaurant or book store; and

WHEREAS, however, the applicant notes that a museum bookstore or restaurant are UG 3 museum uses, and would not satisfy the provision; and

WHEREAS, the applicant also notes that as part of the Whitney's plan to refurbish the Breuer Building and restore many of its spaces to their original appearance and function, it is proposed to install any bookstore and restaurant in their originally proposed locations in the Breuer Building; and

WHEREAS, finally, the applicant notes that the spaces located in the ground floor of the brownstones, with demising walls located between each narrow building, would not accommodate the seating capacity, kitchen space and related service functions that the Whitney is planning for its new restaurant; and

WHEREAS, nevertheless, the applicant stated that it has determined that 34 feet of street frontage an be committed to Use Group MP commercial uses; this amount represents approximately 45 percent of the total street frontage required to contain such commercial uses; and

WHEREAS, finally, the applicant notes that City Planning Commission (the "CPC") may modify the mandatory MP use regulations of Section 99-03 if it certifies that the treatment of the subject building facades "preserves and enhances street life on Madison Avenue compatible with the character of the surrounding area."; the applicant notes that the facades of the brownstones will be carefully restored; and

WHEREAS, the Board observes that it has often allowed applicants to apply for relief from certain provisions that are otherwise waivable at CPC in the context of an application for waivers that can only be granted through the variance process, in the interest of administrative convenience, so long as the specific waiver is needed based on program or actual uniqueness; and

WHEREAS, as to ZR § 99-06, the applicant states that this provision requires that trees shall be installed on the sidewalks for the entire length of the street frontage of the site at intervals of not more than 25 feet; and

WHEREAS, the applicant notes that, in order to comply, eight trees would have to be installed on the Madison Avenue frontage and four trees would be required along both East 74th Street and East 75th Street, for a total of 16 street trees; and

WHEREAS, the applicant states that a minimum of ten trees are proposed; and

WHEREAS, the applicant states that the following street features create a practical difficulty with full compliance: (1) a 14 foot long transformer vault covered by a grating and a 17 foot long curb cut providing access to the Whitney's loading dock along 75th Street; (2) a bus stop that extends for approximately 40 feet along Madison Avenue; (3) a 17 foot wide canopy extending over the sidewalk at the Madison Avenue entrance to the Breuer Building and a second canopy that may cover the sidewalk at the new entrance to the Whitney; and (4) smaller obstructions, such as sign and light poles, parking meters, fire hydrants, mail boxes and public telephones; and

WHEREAS, the applicant notes that the City's Department of Parks and Recreation ("the Parks Department") imposes tree planting guidelines related to minimum interval and distance from signs, etc., that eliminate the possibility of full compliance; and

WHEREAS, at hearing, the Board asked the applicant if larger caliper trees could be provided, to compensate for the decreased amount; and

WHEREAS, the applicant states that it will consult with the Parks Department and endeavor to provide more than ten trees or larger caliper trees, but that it is unable to guarantee that this will happen; and

WHEREAS, in analyzing the Whitney's waiver requests, the Board notes at the outset that the museum, as a non-profit educational institution, may use its programmatic needs as a partial basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see e.g. Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board notes that the Whitney is a chartered educational institution, and provides a significant educational program; and

WHEREAS, at the request of the Board, the applicant provided more detailed information about this program; and

WHEREAS, specifically, the applicant stated that the Whitney offers more than 35 distinct education programs, which serve approximately 100,000 people annually, including school children, senior citizens, families and university students, and that the Whitney's educational programs are staffed by 14 full time employees, 44 docents and 8 to 12 freelance instructors; the applicant provided a list of other educational institutions with which the Whitney has a relationship; and

WHEREAS, the applicant notes that the Whitney currently has no dedicated education space for its education program, and that the Enlargement will provide this much needed space; and

WHEREAS, accordingly, the Board finds it appropriate to give the Whitney's programmatic needs the deference requested by the applicant; and

WHEREAS, the Board observes this deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its initial submission; and

WHEREAS, here, the variances will facilitate construction of a building that will meet the specific needs of the Whitney; and

WHEREAS, specifically, as set forth above, the applicant represents that the Enlargement will provide the Whitney with approximately 20,000 square feet of additional exhibition space, which will enable it to display more than the approximately one percent of its permanent collection that it is now capable of showing; and

WHEREAS, the applicant further represents that the

Enlargement will also provide the Whitney with additional space for its special programs and support functions; and

WHEREAS, the applicant notes that the Enlargement will also result in a larger and more efficient entrance lobby and ticketing area, which will be much easier for the physically challenged to negotiate, and a larger off-street loading area, which will enable the Museum to load and unload all of its art work in a secure, climate-controlled off-street area.

WHEREAS, however, the applicant concedes that a building form that complied with the above cited bulk provisions would also meet the programmatic needs of the applicant; and

WHEREAS, thus, the Whitney's programmatic needs are not the sole basis for the requested waivers; and

WHEREAS, rather, as established above, the need for the waivers is substantially the product of the LPC-imposed requirement that the brownstones and the Breuer Building be maintained as separate contributing buildings within the UESHD; and

WHEREAS, the Board observe that this requirement serves as the primary impetus for the majority of the waivers; while the degree of the some of the waivers is increased due to programmatic needs, they relate primarily to the LPC-approved siting of the Enlargement; and

WHEREAS, the exceptions are the retail frontage requirement, and the street tree requirement; and

WHEREAS, the Board observes that the compliance with the retail frontage requirement would impose a hardship on the Whitney because such compliance is counter to the museum's programmatic needs, as explained above; and

WHEREAS, the Board further observes that the need for a waiver of the street tree requirement is primarily a function of existing street conditions, though it is partially related to the existing and proposed canopies of the museum; and

WHEREAS, in sum, the Board concludes that the need for the waivers has been fully explained and documented by the applicant, based upon the LPC requirements, the nexus between said requirements and the programmatic needs, or actual physical conditions (including the configuration of the existing buildings on the site); and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations, due to the combination of the LPC-imposed requirements as to the location of the Enlargement in relation to the protection of the brownstones and the Breuer Building, as well as the programmatic needs of the Whitney; and

WHEREAS, since the Whitney is a non-profit institution and the variances are needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant notes that the size of the buildings in the immediate vicinity of the site are varied, ranging from one and two story carriage houses to high-rise residential buildings; and

WHEREAS, the building directly to the west of the Breuer Building, at 14 East 75th Street, is an 11-story structure with a height of 166 feet, while the building directly to the north, at 35 East 75th Street, has 16 stories and a height of 192 feet; and

WHEREAS, the building located southwest of the site, at Madison Avenue and East 74th Street is a 15-story, 192-foot high apartment building, while the 40-story, 394-foot high Carlyle Hotel lies one block to the north, at Madison Avenue and East 76th Street; and

WHEREAS, further, the easterly end of the block on which the zoning lot is located contains two 14-story residential buildings; and

WHEREAS, the applicant states that the Enlargement will have nine stories and rise to a complying overall height of 178 feet, and will be comparable in height with a number of surrounding buildings; and

WHEREAS, in support of this statement, the applicant cites to a drawing entitled "Existing Neighborhood Building Heights," which shows that there are 53 buildings with a height of 140 feet or more, and twelve buildings with a height of at least 178 feet, in the area surrounded by Fifth Avenue, Lexington Avenue, East 72nd Street and East 79th Street; and

WHEREAS, the applicant also cites to other submitted drawings that show that, along both sides of Madison Avenue, East 74th Street and East 75th Street in the vicinity of the Whitney, numerous buildings are comparable in height to the Enlargement; and

WHEREAS, the applicant further states that the location of the Enlargement 30 feet from the street line behind the brownstones is also consistent with the built context of the surrounding neighborhood; and

WHEREAS, the applicant notes that there are 15 buildings of 13 stories or higher located in the mid-block, immediately east and west of Madison Avenue within the UESHD; and

WHEREAS, the applicant specifically notes that there is a 15-story building at 23 East 74th Street and a 16-story building at 20 East 76th Street which are also situated in the mid-block; and

WHEREAS, the applicant notes that LPC issued the C of A in recognition of the fact that the Enlargement would be compatible with the built conditions in the UESHD, in terms of height and in terms of its relation to the smaller brownstones; and

WHEREAS, the Board agrees that the C of A, while not dispositive, is highly relevant evidence in support of the conclusion that the proposed development on the Whitney site comports with the essential character of the community; and

WHEREAS, finally, the applicant notes that the Environmental Assessment Statement prepared for this

application demonstrates that the Enlargement will not produce excessive vehicular or pedestrian traffic in the surrounding area or any other negative community impacts; and

WHEREAS, at hearing, the Board asked about potential impacts related to: (1) the proposed loading dock; (2) the proposed crane; and (3) solid waste disposal; and

WHEREAS, as to the proposed loading dock on East 75th Street, the applicant explained that it will be enlarged to a 27 ft. by 87 ft. loading dock and will allow the loading and unloading of trucks that service the Whitney and other activities that are potentially disruptive to the neighborhood to be carried on indoors; and

WHEREAS, the applicant provided a memorandum regarding the dock, which explains that upon its completion, trucks of all sizes, including large tractor trailers, will use it, eliminating the possibility that large trucks will interfere with traffic on East 75th Street while loading and unloading; however, the largest tractor trailers may briefly interrupt traffic on East 75th Street while maneuvering into the loading dock; and

WHEREAS, the applicant notes that the Whitney will be required to obtain special permits from the City's Department of Transportation to temporarily remove three or four parking spaces along East 75th Street in order to provide the trucks with sufficient space to maneuver into and out of the loading dock; and

WHEREAS, however, these very large trucks will only arrive at the Whitney several days a year and, accordingly, any resulting neighborhood disruptions will be minimized; and

WHEREAS, as to the crane, the applicant states that it will be used on infrequent occasions to bring into the Museum works of art that are too large to be brought through the loading dock; and

WHEREAS, when not in use, it will be held in the vertical position, with the top of boom arm reaching a height of approximately 210 feet; and

WHEREAS, the applicant notes that the installation and operation of the crane will comply with applicable provisions of the Building Code; and

WHEREAS, as to solid waste and sanitation services, the applicant explains that, although the Enlargement will generate some additional solid waste, it can be handled by the existing private sanitation service and will not require additional truck trips; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

WHEREAS, as to the self-created hardship finding, the applicant reiterates that the design and siting of the Enlargement as imposed by the LPC is fundamentally at odds with the building envelope mandated under the applicable zoning regulations; and

WHEREAS, the applicant also notes that the Whitney signaled its future expansion plans by incorporating knock-out panels in the south wall of the Breuer Building and commencing acquisition of the brownstones prior to the implementation of the above regulations and prior to the designation of the UESHD; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the Whitney or a predecessor in title; and

WHEREAS, as to minimum variance, the Board notes that the applicant investigated two lesser variance scenarios, one in the initial submission and one at the request of the Board during the hearing process; and

WHEREAS, the initial lesser variance scenario investigated an enlargement that would require fewer zoning waivers than actually requested; and

WHEREAS, specifically, the applicant submitted plans showing an enlargement that sets back from the Madison Avenue and East 74th Street street-lines in the same manner as the Enlargement, thus requiring a variance of Zoning Resolution Section 99-051, but complies with all other bulk regulations, including the Midblock Transition restrictions of Section 99-054(b); and

WHEREAS, the applicant notes that the resulting structure would be a tall, extremely narrow structure, containing 12 stories and reaching the maximum height of 210 feet allowed under the applicable zoning regulations; and

WHEREAS, the applicant further notes that stories six through nine would have a depth of only 40 feet and each of the uppermost three stories, located more than 170 feet above curb level, would have to be progressively narrower than 40 feet in order to comply with ZR Section 99-054(a); and

WHEREAS, the applicant concludes that the resulting floor plates would not provide the Whitney with the relatively large unobstructed gallery spaces that are needed to properly display and view art work, especially the sort of larger works that are such an important part of the permanent collection; and

WHEREAS, the applicant also concludes that the amount of vertical travel between these 12 above grade levels that would be required of both the public visiting the galleries and Whitney staff would be cumbersome, inefficient and undesirable; and

WHEREAS, finally, the applicant notes that although this lesser variance scenario would produce a significantly taller building, it would contain approximately 12,400 less square feet than the Enlargement, which was designed to satisfy the Whitney's minimum programmatic requirements; and

WHEREAS, the Board agrees that such a scenario is not viable, for the cited reasons; however, at hearing, the Board asked the applicant to review a different lesser variance scenario, namely, one that, like the prior scenario, would only require a bulk variance of the mandatory street wall requirements and gross story area restrictions, but which would set back from Madison Avenue 20 feet, rather than 30 feet; and

WHEREAS, the applicant submitted drawings which illustrate this scenario, and concludes that it too would result

in a tall, narrow building that would not meet the Whitney's programmatic needs, in that it would possess smaller floor plates and result in less overall floor space; and

WHEREAS, further, the applicant contends that setting the enlargement back only 20 feet from Madison Avenue would leave the brownstones with the same truncated depth of only 20 feet, which would significantly diminish the reading of these buildings as real, functional structures, separate from the enlargement behind them, as required by LPC; and

WHEREAS, the Board agrees that this second lesser variance is not viable; and

WHEREAS, the applicant further notes that the Enlargement complies with overall floor area and height restrictions, that it will cure a rear yard non-compliance and will reduce a lot coverage non-compliance, both as to the R8B portion of the site, and

WHEREAS, accordingly, the Board finds that the requested waivers represent the minimum variance necessary to allow the Whitney to meet its programmatic needs and the LPC-imposed building form and siting requirements; and

WHEREAS, as summarized in its submission dated July 5, 2006, the Neighbors make the following arguments in opposition to the instant application: 'A' Finding – (1) the applicant's statements as to the Whitney's programmatic needs, particularly in terms of the office use, are not sufficiently specific as to how spaces are currently used and how the new spaces will be used; (2) the 13,000 sq. ft. of retail space has no nexus to the Whitney's program other than revenue production; (3) deference under Cornell is not required for the Whitney, in alignment with the Board's prior decision relating to a homeless shelter under BSA Cal. No. 220-03-BZ; 'B' Finding – (1) a feasibility study should be prepared notwithstanding the Whitney's non-profit status since approximately 20,000 sq. ft. of the Enlargement is devoted to profit-generating uses such as retail and a bookstore and restaurant; (2) the Board should require a feasibility study based upon its prior determination under BSA Cal. No. 194-03-BZ, where the Board required a feasibility study for a proposed catering facility in a religious school; 'C' Finding – (1) the Enlargement is proposed to be a metal-clad tower that is double the height of the Breuer Building; (2) the height and the massing of the tower is inconsistent with nearby buildings and the character of the neighborhood; (3) the LPC C of A is not a replacement for Board review of the potential impact the variances might have on the character of the neighborhood or adjacent uses; (4) the incursion of the tower into the midblock has not been addressed by the applicant; (5) the tower will have a negative impact on the light and air of immediate neighbors' yards; (6) the Enlargement will have a negative effect on pedestrian and vehicular street volumes; 'D' Finding - (1) the Whitney's programmatic space needs are driven, in part, by the retail space; 'E' Finding – (1) the fact that the Enlargement does not utilize the maximum FAR available on the site does not negate the potential impacts of the other variances or excuse the Board from ensuring that minimum variance options have been adequately explored; (2) there is no assurance that LPC would approve a building with more floor area, and a smaller building has not been explored; (3) the proposed lobby within the Enlargement takes up a volume of space in which the Breuer Buildings was able to accommodate both a lobby and galley; (4) the retail space increases the building height by 2.5 stories; (5) the amount of office space is still undefined, which means the Board can not determine if it is a true programmatic need as opposed to a luxury; (5) no pressing need has been shown for the proposed restaurant and gift shop; and (6) removing the outside retail leases and lowering the lobby height would reduce the height by 67 ft., thereby reducing the degree of variance; and

WHEREAS, as to the specificity required to establish programmatic need, the Board finds that the applicant's submissions, which include statements, plans, and other pieces of evidence, provide the required specificity; and

WHEREAS, the Board notes that the Whitney's director made a detailed submission outlining the space constraints of the Breuer Building, and that other witnesses testified at hearing as to the need to enlarge the Whitney; and

WHEREAS, in addition, the applicant explains the need for the additional spaces in a submission dated June 13, 2006, noting that the proposed gallery space will allow for more of the Whitney's art collection to be exhibited on a more frequent basis in spaces that will allow for superior viewing by the museum's visitors; and

WHEREAS, in this same submission, the applicant also explains that the Enlargement will create needed space for the Whitney's educational program; and

WHEREAS, as to the office space issue, the applicant notes that the Whitney's staff is currently in cramped quarters within the brownstones and that the Enlargement will increase the amount of office space from 20,659 sq. ft. to 29,804 sq. ft.; and

WHEREAS, the applicant claims that based upon the amount of Whitney employees that will occupy offices (171), the amount of office space per employee is 174 sq. ft., which is below the general standard of 250 sq. ft. established by CEQR; and

WHEREAS, as to the retail space, the applicant states that the retail frontage is required by ZR § 99-03, whether the proposed development is pursued by a non-profit or not; and

WHEREAS, the Neighbors appear to be arguing that the applicant should be penalized for attempting to partially comply with this zoning provision; and

WHEREAS, the Board also notes that a waiver of this section is available through the CPC, but in the interest of administrative convenience, the waiver request was made a part of this application; and

WHEREAS, the applicant further notes that the retail component only represents about six percent of the space within the Whitney museum complex as proposed to be enlarged, and that for the retail space to be attractive to potential lessees, below grade accessory storage must be provided; and

WHEREAS, as to BSA Cal. No. 220-03-BZ, which was, in part, an application for construction of a new shelter for homeless families, the Board notes that nowhere in the

resolution denying the application does it suggest, as the Neighbors argue, that the Board viewed schools and religious institutions as separate and distinct entities from other non-profits in terms of the deference that should be accorded under Cornell; and

WHEREAS, rather, as the applicant observed, the Board was explaining why the shelter entity's evidence of programmatic need was deemed to be lacking in light of the absence of any contract or other obligation to provide new shelter beds; and

WHEREAS, however, as noted above, the Board finds that the applicant has sufficiently shown why the requested waivers are justified due to the constraints placed on development by the LPC-imposed requirements, the Whitney's programmatic needs, actual unique site conditions such as the existing built conditions on the site or surrounding the site, or a combination of these factors; and

WHEREAS, as to the need for a feasibility study due to the proposed retail space and alleged Board precedent for such a study, the Board again finds that the Neighbors have misconstrued a prior Board decision; and

WHEREAS, the Neighbors cite to the Board's decision in BSA Cal. No. 194-03-BZ, in which the Board asked the applicant for a commercial catering use variance, a religious school, to submit a feasibility study in support of its application; and

WHEREAS, the Board observed in that case that there was no programmatic needs component to the application; the entirety of it related to a large-scale Use Group 9 commercial catering operation that was deemed by the Board to be an entirely separate operation from the religious school; and

WHEREAS, as noted by the applicant, the requested waiver here is not one asking for permission to have the required retail space, but rather one that seeks a reduction in the amount of retail frontage that is normally required; and

WHEREAS, unlike the catering case, where a use variance was required for the catering hall, the retail use here is as of right; and

WHEREAS, likewise, the other cases to which the Neighbor's cite – 179-03-BZ and 315-02-BZ – are also factually dissimilar, in that the requested waivers related to significant floor area increases to accommodate residential uses; and

WHEREAS, again, no increase in the amount of retail floor area is being requested by the applicant; and

WHEREAS, as to the character finding, the Board notes that it heard testimony from many neighbors concerned about the overall height and the overall floor area of the Enlargement; and

WHEREAS, however, the proposed floor area over the entire Whitney Site is within the as of right parameters as set forth in the ZR; and

WHEREAS, further, the overall height is well within the permissible height limit of 210 feet; and

WHEREAS, moreover, the Board does not find that the fact that the proposed height is double the height of the Breuer Building to be in of itself particularly compelling; and

WHEREAS, the Board, as noted above, finds that that the applicant has sufficiently established the proposed height and mid-block location of the Enlargement is comparable to other buildings in the area; and

WHEREAS, furthermore, there is nothing in the record to suggest that the Board has abdicated its responsibility to review the character finding because LPC has approved the Enlargement; the Board recognizes that the C of A speaks to the Enlargement's compatibility with the historic character of the UESHD, and, while the Board deems this approval quite relevant to the instant proceedings, it has nevertheless required the applicant to submit additional evidence addressing the potential impacts on the character of the community and the adjacent uses that the various waivers might create if granted; and

WHEREAS, the Board has reviewed the applicant's submissions and observes that the mid-block location of the tower has been adequately addressed by the applicant, rather than being ignored as the Neighbors suggest; and

WHEREAS, furthermore, the applicant argues, and the Board agrees, that any light and air impacts are no more significant than if the proposed Enlargement complied with the above-referenced provisions; and

WHEREAS, the Board notes that the Neighbors have not submitted any concrete evidence of such impacts, which would allow the Board to engage in meaningful review of its contentions; and

WHEREAS, the Board also observes that the applicant engaged an environmental consultant to investigate traffic impacts and that said consultant, in a report, concluded that while there will be modest increase in bus trips due to the Enlargement, there will not be a significant impact on traffic in the vicinity of the Whitney; and

WHEREAS, as to the self-created hardship finding, the Board rejects the contention that the proposed retail space, and the resulting space needs, is a self-created hardship; and

WHEREAS, as noted above, compliance with the retail frontage requirement is not an option; in fact, it is required within the Special District; and

WHEREAS, as to the minimum variance finding, the Board agrees that the fact that the Enlargement does not utilize the maximum FAR available on the site does not negate the potential impacts of the other variances or excuse the Board from ensuring that minimum variance options have been adequately explored; and

WHEREAS, however, the applicant has undertaken significant analysis of two lesser variance options, and has credibly concluded that they are not viable; and

WHEREAS, the Board notes that the performance of such analysis exceeds what is normally submitted in comparable programmatic needs applications; and

WHEREAS, further, as discussed above, the Board has adequately explored the potential impacts of the variances and the development overall; and

WHEREAS, as to the other contentions regarding minimum variance, the Board has reviewed the applicant's response to the Neighbors, dated May 30, 2006, in which each of the contentions are refuted; and

WHEREAS, the response explains that the lobby, the

amount of office space, and the floor-to-ceiling heights of the gallery spaces are all driven by the need to meet the Whitney's minimum programmatic needs; and

WHEREAS, further, the applicant explains that the office space needs are in fact established, that below grade spaces are being fully utilized, and that the proposed floor plate sizes are the minimum necessary to support the Whitney's mission; and

WHEREAS, in sum, the Board has reviewed the arguments made by the Neighbors and others in opposition to the subject application, as well as the applicant's responses, as stated at hearing and as set forth in its submissions, and finds that each and every one of the opposition contentions are without merit and have been acceptably refuted by the applicant; and

WHEREAS, accordingly, based upon its review of the record and its site visit, the Board finds that the applicant has provided sufficient evidence in support of each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 06BSA033M, dated March 8, 2006; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a November, 2005 Environmental Assessment Statement and (2) a July, 2005 Phase I Environmental Site Assessment; and

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

WHEREAS, a Restrictive Declaration was executed on March 20, 2006 and recorded on April 5, 2006 for the subject property to address hazardous materials concerns; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B(LH-1A) district, the proposed construction of a nine-story addition to the primary building of the Whitney Museum of American Art, that does not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and street trees, contrary to ZR §§ 99-051, 99-052(a), 99-054(a) and (b), 24-591, 99-03, and 99-06, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 18, 2006"-twenty-two (22) sheets and "Received July 21, 2006" – four (4) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, July 25, 2006.

358-05-BZ

APPLICANT – Sheldon Lobel, P.C., for WR Group 434 Port Richmond Avenue, LLC, owner.

SUBJECT – Application December 15, 2005 – Zoning variance pursuant to Section 72-21 to allow UG 6 commercial use (open accessory parking for retail) in an R3A zoned portion of the zoning lot (split between C8-1 and R3A zoning districts).

PREMISES AFFECTED – 438 Port Richmond Avenue, northwest corner of Port Richmond Avenue and Burden Avenue, Block 1101, Lot 62, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Richard Lobel.

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 November 9, 2005, acting on Department of Buildings Application No. 500799987, reads, in pertinent part:

"Term of variance under BSA calendar 307-53-BZ has expired and is referred to the Board of Standards and Appeals for Consideration. [ZR 11-411]"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R3A zoning district and partially within an C8-1 zoning district which has previously been before the Board, a proposed retail use (UG 6) with accessory parking, which is contrary to ZR § 22-00; 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 25, 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 1, Staten Island, recommends approval of the application; and

WHEREAS, the subject premises is located at the southwest corner of Port Richmond Avenue and Burden Avenue; and

WHEREAS, as noted above, the premises is partially within a C8-1 zoning district and partially within an R3A zoning district; the R3A zoning district begins approximately 100 ft. from the Port Richmond Avenue street line and fronts Burden Avenue; and

WHEREAS, the total lot area over the entire site is 17,759 sq. ft., with approximately 12,589.4 sq. ft. within the C8-1 district; and

WHEREAS, the site is currently improved upon with a one-story retail building with two accessory parking lots, one of which is in the C8-1 and fronts the building and the other is within the R3A district at the rear of the building; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since December 17, 1946, under BSA Calendar No. 267-46-BZ, when the Board permitted in a business and residential district, the alteration of an existing garage and motor vehicle repair shop which occupied more than the permitted area; and

WHERAS, subsequently, on several occasions the grant was extended and amended, including under BSA Calendar No. 307-53-BZ, when additional alterations were proposed for the automobile dealership that occupied the site; and

WHEREAS, most recently, on October 31, 1978, the Board granted an application to amend the variance to extend the term for the existing automobile showroom and motor vehicle repair shop with accessory uses; and

WHEREAS, the most recent grant expired on November 19, 1988; and

WHEREAS, at some point after 1978, the motor vehicle showroom and automotive repair use (UG 16) was discontinued; and

WHEREAS, the applicant proposes to rehabilitate the existing 7,660 sq. ft. commercial building at the site to allow for a 7,964.95 sq. ft. UG 6 retail use building and to re-establish two parking lots, one at the front and one at the rear of the lot, consistent with the existing layout; and

WHEREAS, the proposed retail use and some of the accessory parking are located within the C8-1 portion of the site and will be constructed as of right, but the remainder of the accessory parking is located in the adjacent R3A zoning district, thus necessitating the requested use waiver; and

WHEREAS, specifically, the majority of the retail building and 17 of the 29 total parking spaces will be maintained within the C8-1 district; and

WHEREAS, a sliver of the rear of the retail building and 12 accessory parking spaces will be within the R3A district at the rear; and

WHEREAS, the existing curb cuts – two on Burden Avenue (one within the C8-1 district and one within the R3A district) and one on Richmond Avenue (within the C8-1 district) – will remain; and

WHEREAS, the commercial FAR within the C8-1 district is approximately .448; the maximum commercial FAR in the zoning district is 1.0; thus, the proposal applies with applicable FAR; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is divided by a district boundary line, separating the lot between C8-1 and R3A zoning districts, where permitted uses in each district are prohibited in the other district; (2) the site is irregularly shaped, and (3) the historic use of the site; and

WHEREAS, as to the zoning district boundary, the applicant represents that although there are other lots within the area that share this condition, none have as large of a percentage of their lot area within the residential district; and

WHEREAS, the applicant submitted a 400 ft. radius map that supports this assertion; and

WHEREAS, the Board agrees that no other split lots within the 400 ft. radius have as large of a portion within the residential district as the subject site; and

WHEREAS, additionally, the applicant represents that development on the R3A portion of the site is limited by its trapezoidal shape, which varies 23.5 feet in width from the front to the rear of the lot; and

WHEREAS, the Board notes that the shape of the development site – an "L" shape - is unusual, and further compromises conforming development over the entire site; and

WHEREAS, finally, the Board notes that there is a 60-year history of commercial use at the site, and that the prior uses, including a motor vehicle showroom and automotive repair shop, were more offensive than the proposed retail use; and

WHEREAS, additionally, the Board notes that retail use is as of right in the C8-1 zoning district; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions – namely, the existence of the district boundary, the lot's unusual shape, and the history of UG 16 uses at the site - when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study

that analyzed an as of right residential and retail scenario, with the residentially zoned portion of the lot being developed with a two-family dwelling; and

WHEREAS, the applicant concluded that the as of right scenario would generate a negative return, due to costs related to the above-stated unique physical conditions; and

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

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

WHEREAS, first, the applicant notes that there is a long history of commercial use at the site; and

WHEREAS, the applicant adds that the majority of the lot's area is within the C8-1 zoning district, a heavy commercial zone, and a C2-2 overlay lies directly across Burden Avenue from the site; and

WHEREAS, the Board notes that there is an established commercial corridor along Port Richmond Avenue, but that the site abuts a residential district; and

WHEREAS, the Board suggested that the applicant install a buffer along the R3A portion in order to ease the transition between zoning districts; and

WHEREAS, at hearing, the applicant agreed to install a six ft. opaque fence along the portion of the site that abuts the residential use; and

WHEREAS, the Board notes that the proposed bulk parameters, including a perimeter wall height and total height of 24'-3"; an FAR of .448; and a floor area of 7,964.95 sq. ft., comply with applicable zoning district regulations; and

WHEREAS, as to the parking, the Board asked the applicant how many parking spaces could be accommodated in both accessory lots; and

WHEREAS, the applicant responded that based on the standard of 300 sq. ft. per space, 17 spaces could be accommodated within the front parking lot and 12 spaces within the rear

WHEREAS, the applicant notes that 25 parking spaces are required at the site, based on the zoning parameters for the retail building; and

WHEREAS, the board agrees that these representations establish that the required amount of parking can be accommodated at the site; and

WHEREAS, the Board further notes that the parking encroachment into the R3A district is restricted to the same degree of encroachment that currently exists on the site; and

WHEREAS, the Board also asked the applicant to submit a signage plan, indicating the size and location of all signs at the site; and

WHEREAS, the applicant submitted a signage plan illustrating complying signage, all of which is located within the C8-2 portion of the site; and

WHEREAS, finally, the Board notes that while the site will be occupied by a UG 6 retail and parking lot, this use will replace a more intensive UG 16 commercial use that historically occupied the site; and

WHEREAS, moreover, the retail use will occupy the same footprint as the existing building; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the trapezoidal shape of the block and the placement of the district boundary line; and

WHEREAS, the applicant represents that strict compliance with all zoning regulations would force the owner to effectively abandon a portion of the lot and therefore compromise the overall return; and

WHEREAS, the applicant concluded that the current proposal would realize a minimal return sufficient to overcome the site's inherent hardship; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 06BSA042R, dated May 16, 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, with conditions as stipulated below, prepared in accordance with Article 8 of the

New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R3A zoning district and partially within an C8-1 zoning district which has previously been before the Board, a proposed retail use (UG 6) with accessory parking, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 25, 2006"- three (3) sheets; and *on further condition*:

THAT all fencing as shown on the BSA-approved plans shall be opaque;

THAT all lighting on the site shall be directed downwards and away from any adjacent residential use;

THAT a maximum of 29 and a minimum of 25 parking spaces shall be provided in the accessory parking lot;

THAT the two parking lots shall only be used for accessory business purposes; no commercial parking is permitted;

THAT the above conditions shall be listed 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 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 25, 2006.

26-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Empire Staten Island Development, LLC, owner; L. A. Fitness International, LLC, lessee.

SUBJECT – Application February 16, 2006 – Special Permit application pursuant to Z.R. §§ 73-03 and 73-36 to operate a 51,609 square foot Physical Culture Establishment (LA Fitness) in an existing vacant one-story building. The site is located in within an existing shopping center in a M1-1 zoning district.

PREMISES AFFECTED – 145 East Service Road/West Shore Expressway, Block 2630, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Ellen Hay.

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 February 7, 2006, acting on Department of Buildings Application No. 500820515, reads, in pertinent part:

> "As per Section 73-36, physical culture or health establishments may be permitted by the Board of Standards and Appeals."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-1 zoning district, the establishment of a physical culture establishment ("PCE") to be located within an existing one-story building, which is part of a shopping center, contrary to ZR § 42-00; 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 25, 2006; and

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

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

WHEREAS, certain neighbors expressed concern about potential parking impacts; these concerns are discussed below; and

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the shopping center site is located on a triangular block bound by East Service Road/West Shore Expressway to the west, Alberta Avenue to the north, and Wild Avenue at the east; and

WHEREAS, the shopping center occupies Block 2638, Lots 50, 60, and 63 with two commercial buildings and a total of 542 unattended parking spaces which are shared by the lots; and

WHEREAS, Lot 50 is to be occupied by the proposed PCE building and accessory parking; Lot 60 is occupied by other commercial uses including a Department of Motor Vehicles, a bowling alley, restaurants, and offices; Lot 63 is a vacant parking lot, which is cordoned off and inaccessible, at the rear of the commercial building on Lot 60; and

WHEREAS, Lot 63 is not part of the application and will not be used by the PCE; and

WHEREAS, the shopping center site has a lot area of 248,092 sq. ft.; and

WHEREAS, the PCE will occupy 51,609 sq. ft. of the one-story building, formerly occupied by a movie theater which is located at the Wild Avenue side of the shopping center near the corner with East Service Road; and

WHEREAS, an existing mezzanine within the existing building will be removed; and

WHEREAS, the applicant represents that the PCE will offer classes in physical improvement, strength training,

weight training, group fitness programs, personal training, cardio-vascular programs, and basketball and racquet ball courts for members; and

WHEREAS, the applicant proposes to operate the facility as an L.A. Fitness gym; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to respond to the concerns of the neighbors and describe the proposed accessory parking needs generated by the PCE; and

WHEREAS, the applicant represents that there is a reciprocal easement agreement for the shared parking; this agreement does not include Lot 63; and

WHEREAS, additionally, the applicant represents that there is a capacity for 233 parking spaces within a discrete rectangular portion of Lot 50 abutting the proposed PCE; and

WHEREAS, the applicant's parking analysis determined that 142 parking spaces would be sufficient to accommodate the PCE's parking needs during its peak hour of 6:00 p.m. to 7:00 p.m., weekdays; and

WHEREAS, the applicant notes that most shopping center visitors park nearest to the business they are patronizing; and

WHEREAS, therefore, the applicant asserts that visitors to the PCE will park in the lot nearest to the PCE on Lot 50 and will not impact the parking availability for other uses within the shopping center; and

WHEREAS, the Board agrees that there is ample parking for all shopping center uses and that the proposed use would likely have less impact on parking and vehicular traffic than the prior movie theater use; and

WHEREAS, at the request of the Board, the applicant submitted an analysis indicating that the proposed accessory business signage is compliant with district regulations; and

WHEREAS, accordingly, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the PCE 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 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 §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA055R, dated February 13, 2006 and

WHEREAS, the EAS documents show that the operation of the PCE 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 operation of the PCE 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, the establishment of a physical culture establishment located within an existing one-story building within a shopping center, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 24, 2006"-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on July 25, 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 limited to Monday through Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 6:00 a.m. to 8:00 p.m.;

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

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

THAT all signage shall comply with regulations applicable in M1-1 zoning districts;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements 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 the 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 25, 2006.

33-06-BZ

APPLICANT – Rampulla Associate Architects, for Carroll's Garden Florist Corporation, owner.

SUBJECT – Application February 28, 2006 – Zoning Variance under Z.R. §§ 72-21 to allow a horizontal and vertical enlargement of an existing one-story retail building (UG 6) located in an R1-2 district; contrary to Z.R. § 22-00.

PREMISES AFFECTED – 1457 Richmond Road, N/S Richmond Road 0'0" from the intersection of Delaware Street, Block 869, Lot 359, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

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 February, 13 2006, acting on Department of Buildings Application No. 500812472, reads, in pertinent part:

"1. The proposed construction of a two (2) story building with retail sales (Use Group 6) on the first floor and offices (Use Group 6) on the second floor located within an R1-2 District is contrary to ZR 22-00 of the NYC Zoning Resolution.
2. There is no parking, loading or bulk regulations for a Use Group 6 building located within a Residential Zoning District as per ZR 23-00 and ZR 25-00."; and

WHEREAS, this is an application under ZR § 72-21, to permit a vertical and horizontal enlargement of an existing lawful non-conforming one-story retail building (UG 6) located in an R1-2 district, which is contrary to ZR §§ 22-00, 23-00, and 25-00; 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 25, 2006; and

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

WHEREAS, certain neighbors provided testimony in opposition to the proposal citing concerns about parking and access to light and air; and

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

WHEREAS, the site is located at the northwest corner of Richmond Road and Delaware Street; and

WHEREAS, the site has a total lot area of 4,201 sq. ft. and is currently improved upon with a 660 sq. ft. one-story garden supplies building with two loading docks and an accessory parking lot for six cars; and

WHEREAS, the subject lot is used by a floral and gardening business and is part of the same establishment as the business located across the street at 1461 Richmond Road; and

WHEREAS, 1461 Richmond Road is located within an R2 zoning district and is occupied by the business' main retail sales building and outdoor display area; and

WHEREAS, 1461 Richmond Road is not a part of the subject variance request; and

WHEREAS, the applicant proposes to construct a second-story horizontal and vertical extension to the garden supplies building; and

WHEREAS, the proposal includes converting the use of the garden supplies building to a sales office for high end paper goods, wedding favors, and invitations; accessory offices would be located on the new second floor; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the size and orientation of the lot; (2) its frontage on a heavily trafficked arterial street, (3) a distinct slope, and (4) the history of development on the site; and

WHEREAS, as to uniqueness, the applicant states that the lot is undersized at 4,210 sq. ft. (5,700 sq. ft. is the minimum required lot size in the R1-2 zoning district); and

WHEREAS, the applicant submitted a 400-ft. radius diagram that demonstrates that the subject lot is the only such undersized corner lot with frontage on the heavily trafficked Richmond Road; and

WHEREAS, the applicant asserts that because Richmond Road is a heavily trafficked main arterial road, residential development on the site would be compromised in terms if marketability; and

WHEREAS, as to slope, the applicant represents that the entire Delaware Street frontage of the site slopes down from the uppermost part of Delaware Street at 90.79 ft., down to Richmond Road at 77.65 ft.; and

WHEREAS, as discussed below, the slope makes a redevelop for residential use impractical; and

WHEREAS, as to the historic use of the site, the applicant represents that the subject property was originally located in a Retail zoning district before the enactment of the 1961 Zoning Resolution and work on the building commenced but was not completed prior to the change of the zoning district from Retail to R3-2; and

WHEREAS, the completion of the building was permitted pursuant to ZR § 11-322; and

WHEREAS, the subject garden supplies building, loading dock, and accessory parking lot have been in existence for nearly forty years; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, namely the size of, and the slope on, the site; its location on a heavily trafficked thoroughfare; and the historic use of the site as a garden supplies building, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the applicant represents that there is no reasonable possibility that the development of the lot in strict conformity with the provisions of the Zoning Resolution will bring the applicant a reasonable return; and

WHEREAS, specifically, the applicant notes that advancement in the florist industry including the ability to import plants more easily, have made the current building obsolete and not marketable; and

WHEREAS, the applicant also notes that the existing building is not compliant with the Americans with Disabilities Act (ADA) since it is set into a hill which necessitates steps to gain access; and

WHEREAS, therefore, the applicant asserts that any retrofit to make the existing obsolete building ADA-compliant would not be cost effective; and

WHEREAS, the applicant concluded that a conforming scenario, that of a single-family dwelling, would not result in a reasonable return, due to the inefficiencies of the existing building and the other above-stated unique physical conditions; and

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

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

WHEREAS, the applicant asserts that all four of the corner properties at the intersection of Delaware Street and Richmond Road are occupied by non-conforming commercial uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram to support this assertion; and

WHEREAS, the applicant represents that the nearby uses include restaurants, a nail salon, professional offices, and several other shops; and

WHEREAS, the applicant also represents that the present use within the building has existed for nearly 40 years; and

WHEREAS, the Board notes that the proposed commercial FAR of 0.50 is within the R1-2 zoning district regulations for residential uses; and

WHEREAS, further, the Board notes that the residential style of the proposed building is compatible with the neighborhood character; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, in addition to the analyses of the conforming scenarios, the applicant also analyzed the proposal and concluded that it would realize a minimal return sufficient to overcome the site's inherent hardships; and

WHEREAS, accordingly, the Board finds that the proposal describes a minor enlargement and is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 06BSA058R, dated February 28, 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; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit a vertical and horizontal enlargement of an existing lawful non-conforming one-story retail building (UG 6) located in an R1-2 district, which is contrary to ZR §§ 22-00, 23-00, and 25-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 6,

2006"-three(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building, post-enlargement: a maximum of two stories, a total floor area of 2,006 sq. ft., a total FAR of 0.50, and six parking spaces, all as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, July 25, 2006.

46-06-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for West 55th Street Building, LLC, owner; Club H. NY, LLC, lessee.

SUBJECT – Application March 17, 2006 – Special Permit pursuant to Z.R. Sections 73-03 and 73-36 to allow the proposed Physical Culture Establishment on the first floor and mezzanine of the subject 12-story commercial building. The first floor and mezzanine are currently vacant. The subject premises is located in a C6-2 zoning district within the Special Clinton District.

PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Ellen Hay.

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 Manhattan Borough Commissioner, dated March 3, 2006, acting on Department of Buildings Application No. 104325776, reads, in pertinent part:

> "Proposed physical culture establishment including gymnasium is not permitted as of right in C6-2 zoning district. This is contrary to section 32-10 ZR."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C6-2 zoning district within the Special Clinton District, the establishment of a physical culture establishment ("PCE") located on the first floor and mezzanine of an existing 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, and then to decision on July 25, 2006; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject site is located on the north side of West 55th Street, between Ninth and Tenth Avenues; and

WHEREAS, the proposed PCE will occupy a total of 20,232 sq. ft. of floor area, with 17,453 sq. ft. on the first floor and 1,929 sq. ft. on the mezzanine; and

WHEREAS, the applicant represents that the PCE, operated as Club H. NY, will offer classes in physical improvement, strength training, weight training, group fitness programs, and cardio-vascular programs; and

WHEREAS, the PCE will have the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday from 5:00 a.m. to 9:00 p.m., and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the Board finds that this action will neither: 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

WHEREAS, the establishment of the PCE 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 requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA064M, dated March 16, 2006; and

WHEREAS, the EAS documents show that the operation of the PCE 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 operation of the PCE 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 a C6-2 zoning district within the Special Clinton District, the establishment of a PCE located on the first floor, and mezzanine of an existing 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 24, 2006"-(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on July 25, 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 limited to: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday from 5:00 a.m. to 9:00 p.m., and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

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

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

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

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

THAT the Department of Buildings must ensure compliance with all of the 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 25, 2006.

62-06-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Albert J and Catherine Arredondo, owners.

SUBJECT – Application April 10, 2006 – Pursuant to Z.R. § 72-21 Variance is to allow the addition of a second floor and attic to an existing one story, one family residence. The enlargement will increase the degree of non-compliance for the rear yard, side yards and exceed the permitted floor area.

PREMISES AFFECTED – 657 Logan Avenue, west side of Logan Avenue 100' south of Randall Avenue, Block 5436, Lot 48, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 Bronx Borough Commissioner, dated March 8, 2006, acting on Department of Buildings Application No. 200859936, reads:

"1. Proposed plans are contrary to ZR 23-461 in that the proposed straight line enlargement continues with the existing non-complying side yards and is less than the minimum required side yard of 5'-0".
2. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30'-0".
3. Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the permitted floor area."; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single-family home, which will increase the degree of noncompliance as to side and rear yards and create a non-compliance as to floor area, contrary to ZR §§ 23-141, 23-461, and 23-47; 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 25, 2006; and

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

WHEREAS, the site is located on the west side of Logan Avenue, 100 feet south of Randall Avenue; and

WHEREAS, the site is 30 ft. in width and 100 ft. in length, with a total lot area of 3,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a 895 sq. ft. one-story with cellar single family home and a one-story detached garage; and

WHEREAS, the site is the subject of a prior Board grant, under BSA Cal. No. 276-04-BZ, which permitted a home enlargement which increased the degree of non-compliance as to the side and rear yards; and

WHEREAS, at the time of the prior grant, the site was zoned R4, so the variance request was limited to issues relating to the rear and side yards; the requested floor area and FAR were within the amount permitted in the R4 zoning district; and

WHEREAS, the applicant was unaware of the re-zoning and since it became effective during the time that the prior variance was pursued, it has been rendered moot; and

WHEREAS, the applicant proposes to add a second story and attic to the existing one-story house; and

WHEREAS, this addition will increase the floor area from 895 sq. ft. (0.30 FAR) to 2,498 sq. ft. (FAR of 0.83); the maximum floor area permitted is 1,800 sq. ft. (FAR of 0.60 with attic); and

WHEREAS, the proposed enlargement will maintain the

non-complying 1'-5" rear yard (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement will maintain the non-complying 1'-5" and 1'-8" side yards (in an R3A district one 8'-0" side yard is required); and

WHEREAS, the enlargement will maintain the complying front yard of 48'-6" (a minimum front yard of 10'-0" is required); and

WHEREAS, although the yards will remain the same, the proposed enlargement will increase the degree of non-compliance for the side and rear yards because the encroachments will be within the non-complying yards; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site is encumbered with a significant slope; the house is located at the rear of the property on a hill; and there are existing non-complying front and rear yards; and

WHEREAS, the applicant represents that given the existing topography and grade change, it is not practical to construct an enlargement towards the front of the lot, and that any such enlargement might have negative impact on the adjacent dwelling to the south since it is constructed on the front of its lot; and

WHEREAS, the applicant represents that to construct a second story and attic in compliance with the required 30 ft. rear yard and 8 ft. side yard, there would only be an additional 269 sq. ft. of floor area on the second floor and 269 sq. ft. of floor area in the attic; construction of an addition to accommodate such limited floor area would not be practical given the costs involved; and

WHEREAS, the applicant has submitted a land use survey/property chart of all of the residentially-occupied zoning lots in the R3A and R4 zoning districts within a 400 ft. radius of the site, which shows that the subject premises is the only one-story dwelling located on a hill; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, namely the slope of the site and the location of the residence on the top of a hill at the rear of the lot with non-complying rear and side yards, create a practical difficulty in developing the site in compliance with the applicable zoning provisions; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that an enlargement using available floor area will comply with the applicable zoning requirements; and

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

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding one- and two-family two-story residences; and

WHEREAS, the applicant's land use survey shows that 85 out of the 102 surrounding residences are two stories; and

WHEREAS, the applicant notes the since the adjacent neighbor's house is built to the front of the lot, it is most compatible to retain the subject house at the rear of its lot and build above it rather than build within the large front yard and abut the neighbor's home; and

WHEREAS, the applicant states that, with the consideration of the building placement, the impact on the surrounding residences' light and air is minimized; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, in an R3A zoning district, the proposed enlargement of an existing one-story with cellar single family home within non-complying side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 10, 2006"– (9) sheets and "Received July 5, 2006"–(2) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.83; a floor area of 2,498 sq. ft.; side yards of 1'-5" and 1'-8"; a front yard of 48'-6"; and a rear yard of 1'-5";

THAT the total attic floor area shall not exceed 569 sq. ft., as confirmed by DOB;

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

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 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 25, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – Pursuant to Z.R. § 72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.
PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Joseph Margolis, Ivan Khoury and Raymond Chan.

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

194-04-BZ thru 199-04-BZ
APPLICANT – Agusta & Ross, for Always Ready Corp., owner.
SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.
PREMISES AFFECTED –

9029 Krier Place, a/k/a 900 East 92nd Street, 142' west of East 92nd Street, Block 8124, Lot 75 (tentative 180), Borough of Brooklyn.

9031 Krier Place, a/k/a 900 East 92nd Street, 113.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 179), Borough of Brooklyn.

9033 Krier Place, a/k/a 900 East 92nd Street, 93' west of East 92nd Street, Block 8124, Lot 75 (tentative 178), Borough of Brooklyn.

9035 Krier Place, a/k/a 900 East 92nd Street, 72.5' west of East 92nd Street, Block 8124, Lot 75 (tentative 177), Borough of Brooklyn.

9037 Krier Place, a/k/a 900 East 92nd Street, 52' west of East 92nd Street, Block 8124, Lot 75 (tentative 176), Borough of Brooklyn.

9039 Krier Place, a/k/a 900 East 92nd Street, corner of East 92nd Street, Block 8124, Lot 75 (tentative 175), Borough of Brooklyn.

COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Mitchell Ross, N. Nick Perry,Wayne, Yvonne Saintil, Chandra Agustin and Yousif ?.

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

286-04-BZ & 287-04-BZ
APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.
SUBJECT – Application August 18, 2004 – Under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.
PREMISES AFFECTED –

85-78 Santiago Street, west side, 11.74' south of McLaughlin Avenue, Block 10503, Part of Lot 13 (tent.#13), Borough of Queens.

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

COMMUNITY BOARD #8Q
APPEARANCES – None.

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

364-04-BZ
APPLICANT – Sheldon Lobel, P.C., for New Lots Avenue, LLC, owner.
SUBJECT – Application November 18, 2004 – pursuant to Z.R. §72-21 to permit the proposed construction of a one-story commercial building, for use as three retail stores, Use Group 6, located within a residential district, is contrary to Z.R. §22-00.
PREMISES AFFECTED – 690/702 New Lots Avenue, south side, between Jerome and Warwick Streets, Block 4310, Lots 5, 7, 8 and 10, Borough of Brooklyn.
COMMUNITY BOARD #5BK
APPEARANCES –
For Applicant: Richard Lobel.
For Opposition: Earl Williams-CB, Katherine Johnson, Renee Spencer, Yvette ?, Mae Bettie and Etta M. Lewis.
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.

381-04-BZ
APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC, owner.
SUBJECT – Application December 2, 2004 - Variance pursuant to Z.R. Section 72-21 to permit the construction of a four-story building to contain 20 residential units with 10 parking spaces. The site is currently an undeveloped lot which is located in an M1-1 zoning district. The proposal is contrary to district use regulations pursuant to Z.R. Section 42-00.
PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227 Boerum Street, northeast corner of the intersection of Boerum Street and Bushwick Place, Block 3073, Lot 97, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Jordan Most.

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

128-05-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Yisroel Y. Leshkowitz & Esther S. Leshkowitz, owner.

SUBJECT – Application May 24, 2005 – under Z.R. § 73-622 – to permit the proposed enlargement of an existing single family residence, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space ratio, also side and rear yard, is contrary to Z.R. § 23-141, § 23-461 and § 23-47.
PREMISES AFFECTED – 1406 East 21st Street, between Avenue "L" and "M", Block 7638, Lot 79, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra Altman, David Shteierman and Fredrick A. Becker.

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

313-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.
SUBJECT – Application October 20, 2005 – under Z.R. §72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.
PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Richard Lobel and Howard Chin
For Opposition: Stuart Beckerman and Neal Johnston.

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

298-05-BZ
APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.
SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.
PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Phil Rampulla.
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 1:30 P.M., for decision, hearing closed.

10-06-BZ
APPLICANT – Harold Weinberg, for David Cohen, owner.
SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.
PREMISES AFFECTED – 2251 East 12th Street, east side 410' south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Harold Weinberg.
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.

11-06-BZ
APPLICANT – The Law Office of Frederick A. Becker for Miriam Schubert and Israel Schubert, owner.
SUBJECT – Application January 18, 2006 – Under Z.R. § 73-622 to permit the enlargement to an existing single family residence, located in an R-2 zoning district, which doe not comply with the zoning requirements for floor area ratio, open space ratio and rear yard (Z.R. § 23-141 and § 23-47).
PREMISES AFFECTED – 1245 East 22nd Street, East 22nd Street between Avenue K and Avenue L, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra Altman, Fredrick A. Becker and David Shtierman..

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

55-06-BZ
APPLICANT – Rampulla Associates Architects, for Nadine Street, LLC, owner.
SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.
PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –

For Applicant: Phil Rampulla.

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

127-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Kaufman Center, owner.

SUBJECT – Application June 16, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to enlarge an existing community facility building. Proposal is non-compliant regarding floor area ratio (FAR) and rear yard. The site is located within a C4-7(L) zoning district; contrary to Z.R. 33-123 and 33-26.

PREMISES AFFECTED – 129 West 67th Street, north side of 67th Street, between Broadway and Amsterdam Avenue, Block 1139, Lots 1, 8, 57, 107, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Lydia Kontos and Alex Lamis.

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 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:40 P.M.