
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DIRECTORY

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DOCKETS

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176-06-BZ

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177-06-BZ

1840 Richmond Terrace, Clove Road and Bodine Street, Block 201, Lot 32, Borough of **Staten Island, Community Board: 1.** Under 72-21,11-411 & 11-413-A new variance application to reinstate variance originally granted under the 1916 Zoning Resolution and to permit the change of use to similar uses in the same Use Group.

178-06-BZ

609 Madison Avenue, Southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of **Manhattan, Community Board: 8.** (SPECIAL PERMIT) 73-36 - to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.

179-06-A

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180-06-BZ

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181-06-BZ

471 Washington Street, Southeast corner of the intersection of Washington and Canal Streets, Block 595, Lot 33, Borough of **Manhattan, Community Board: 1.** Under 72-21 - To permit the construction of a new nine-story building with residential use on its upper eight floors.

182-06-A

146 Beach 5 Street, Bound by Seagrit Avenue to the north, Beach 5th Street to the east, Beach 6th street to the west and Reynolds Channel to the south., Block 15608, Lot 1, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

183-06-A

148 Beach 5 Street, Bounded by Seagirt Avenue to north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south., Block 15608, Lot 40, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

184-06-A

150 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 42, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

194-06-A

134 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 67, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

185-06-A

152 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 45, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

186-06-A

154 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 51, Borough of **Queens, Community Board: 14.** Appeal - To complete construction in accordance with previously approved and validly issued building permits.

DOCKET

187-06-A

156 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 52, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

188-06-A

158 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 53, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

189-06-A

160 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 57, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

190-06-A

126 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 58, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

191-06-A

128 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 61, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

192-06-A

130 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 63, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

193-06-A

132 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south, Block 15608, Lot 65, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

195-06-A

136 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west and Reynolds Channel to the south., Block 15609, Lot 69, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

196-06-A

151 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south., Block 15609, Lot 1, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

197-06-A

153 Beach 5 Street, Bounded by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th to the west and Reynolds Channel to the south., Block 15609, Lot 3, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

198-06-A

155 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south, Block 15609, Lot 6, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

199-06-A

157 Beach 5 Street, Bound by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west and Reynolds Channel to the south, Block 15609, Lot 8, Borough of **Queens, Community Board: 14**. Appeal - To complete construction in accordance with previously approved and validly issued building permits.

DOCKET

212-06-BZ

242-02 61st Avenue, Douglaston Parkway and 61st Avenue., Block 8286, Lot 185, Borough of **Queens, Community Board: 11**. Under 72-21 - To convert an existing 41,913 sf supermarket (UG6) into an electronic store with no limitations on floor area (UG10).

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

OCTOBER 17, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 17, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

459-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Angelone, owner.

SUBJECT –Application August 21, 2006 - Extension of Term of a special permit, granted pursuant to section 73-50 of the zoning resolution, allowing a waiver of the rear yard requirement for a lot located along district boundaries. The premises is located within a C8-1 zoning district.

PREMISES AFFECTED – 2424-48 Flatbush Avenue, southwest corner of the intersection of Flatbush Avenue and Avenue T, Block 8542, Lots 41 and 46, Borough of Brooklyn.

COMMUNITY BOARD #18BK

1289-80-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for Fred Straus, owner; Bally Total Fitness, lessee.

SUBJECT –Application August 18, 2006 - Extension of Term of a variance allowing the operation of a Physical Culture establishment in a C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231st Street, southwest corner of Tibbett Avenue, Block 5711, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #8BX

938-82-BZ

APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.

SUBJECT – Application August 4, 2006 - to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR Section 22-10.

PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #15BK

331-98-BZ

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

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

PREMISES AFFECTED – 1426-1428 Fulton Street, southside of Fulton between Brooklyn and Kingston Avenue, Block 1863, Lots 9 & 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

91-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Deborah & John Vesey, lessee.

SUBJECT – Application May 9, 2006 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street (Beach 211th Street), and the upgrade of an existing private disposal located within the bed of a mapped street and service lane (Lincoln /Marion Service Road) is contrary to Section 35, General City Law and Buildings Department Policy .Premises is located within an R4 Zoning District

PREMISES AFFECTED – 38 Lincoln Walk, west side Lincoln Walk 120.5' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

101-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Jennifer & Peter Frank, owners.

SUBJECT –Application May 23, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street contrary to Section 35, Article 3 of the General City Law and the upgrade of an existing private disposal system located within the bed of mapped street contrary to Section 35, Article 3 of the General City Law .Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 35 Market Street, north side Rockaway Point Boulevard at intersection of mapped Beach 202nd Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

154-06-A

APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development

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commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

155-06-A

APPLICANT – Cozen O’Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 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. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #6BK

179-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Deborah & John Vesey, lessee.

SUBJECT – Application May 9, 2006 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street (Beach 211th Street), and the upgrade of an existing private disposal located within the bed of a mapped street and service lane (Lincoln/Marion Service Road) is contrary to Section 35, General City Law and Buildings Department Policy. Premises is located within an R4 Zoning District.

PREMISES AFFECTED – 38 Lincoln Walk, west side Lincoln Walk 120.5’ north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

OCTOBER 17 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 19, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

302-05-BZ

APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.

SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 & 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).

PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100’ east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

82-06-BZ

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 - pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. Section 22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

132-06-BZ

APPLICANT– Fried Frank Harris Shriver & Jacobson, LLP, for 122 Greenwich Owner, LLC, owner.

SUBJECT – Application June 23, 2006 – Variance pursuant to Z.R. 72-21 to allow an eleven (11) story residential building with ground floor retail and community facility uses on a site zoned C6-2A and C1-6. The proposed building would contain 36 dwelling units and would be non-complying with respects to floor area, lot coverage, rear yard, height and setback, inner court, and elevator bulkhead

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requirements; contrary to Z.R. sections 23-145, 35-31, 23-47, 35-24, 23-633, 23-851 and 33-42.

PREMISES AFFECTED – 122-136 Greenwich Avenue, northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of Manhattan

COMMUNITY BOARD #2M

176-06-BZ

APPLICANT– Lewis E. Garfinkel, R.A., for Aryeh Adler, owner.

SUBJECT – Application August 16, 2006 - Pursuant to ZR 73-622 for the enlargement of a single family home which proposes less than the minimum rear yard, ZR 23-47, side yards, ZR 23-461, open space, ZR 23-141 and exceeds the permitted FAR, ZR 23-141. The premise is located in an R2 zoning district.

PREMISES AFFECTED – 1253 East 28th Street, east side of East 28th Street, Block 7646, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, AUGUST 22, 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, June 13, 2006 as printed in the bulletin of June 22, 2006, Vol. 91, No. 25. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner; Vandale Motors Incorporated, lessee.

SUBJECT – Application January 25, 2005 – Extension of Term/Amendment – to include a height change from the approved 17'-3" to 28'6" for the purpose of adding a storage mezzanine.

PREMISES AFFECTED – 5832 Broadway, a/k/a 196-198 West 239th Street, South east corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of the Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba.

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 waiver of the Rules of Practice and Procedure, a reopening, an amendment to a previously granted variance to permit modifications to the plans for an accessory convenience store, and an extension of term, which expired on December 17, 2004; and

WHEREAS, a public hearing was held on this application on August 8, 2008, after due notice by publication in *The City Record*, and then to decision on August 22, 2006; and

WHEREAS, the a Board notes that this case was scheduled for dismissal, for reasons discussed below; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Broadway and 239th Street; and

WHEREAS, the site is located within a C2-5(R7-1) zoning district, and is improved upon with an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1959 when, under the subject

calendar number, the Board granted a variance for the construction and maintenance of a gasoline service station for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on April 16, 1996 for a term of ten years from the expiration of the prior grant (December 17, 1994); and

WHEREAS, the grant was most recently amended on June 16, 1998 to permit certain site modifications, including the installation of a metal canopy, and a 24'-0" by 27'-0" enlargement of the existing accessory bays to create an attendant's booth and convenience store; and

WHEREAS, the total square footage of the enlargement was capped at 50 percent of the existing floor area, as required by ZR § 11-412; and

WHEREAS, the enlargement was never constructed; and
WHEREAS, the applicant now proposes to modify the enlargement; and

WHEREAS, specifically, the applicant proposes to raise the accessory building's height from 12'-7" to 28'-6" (the prior approval was for a height of 17'-3"); and

WHEREAS, initially, the applicant submitted plans which identified an upper level as a mezzanine; and

WHEREAS, the Board noted that the mezzanine space would be counted as zoning floor area and that, with the change, the proposed building's floor area would exceed the 50 percent cap of ZR § 11-412; and

WHEREAS, the applicant later contended that the upper level, with a 7'-6" ceiling height, was an attic and would not count as zoning floor area; and

WHEREAS, at hearing, the Board asked the applicant to secure an opinion from DOB as to how the upper level should be classified; and

WHEREAS, the applicant initially failed to secure an opinion from DOB and otherwise failed to prosecute the application, so the Board put the case on for dismissal; and

WHEREAS, the applicant ultimately obtained a Reconsideration from DOB, dated July 12, 2006, which states that the upper level, with structural head room of 7'-6", meets the criteria for attic space within the underlying R7-1 zoning district and the matter was removed from the dismissal calendar; and

WHEREAS, DOB states that a condition for attic designation is that the Certificate of Occupancy note that the space will be used only for storage; and

WHEREAS, notwithstanding the DOB opinion, at hearing, the Board asked the applicant if the full 28'-6" height was necessary to accommodate the first floor convenience store and required attic storage space; and

WHEREAS, the applicant responded that the roof's peak was not necessary, but that the building was designed with it in order to be more compatible with adjacent residential use; and

WHEREAS, the Board agrees that the pitched roof is compatible with the neighborhood and is in scale with the surrounding three- and four-story buildings; and

WHEREAS, in addition to the above-described issue, the

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applicant identified several non-compliances with the June 16, 1998 grant including discrepancies with the parking spaces, landscaping, fencing, and the location of an air pump and a hydrant; and

WHEREAS, the applicant represents that all non-compliances will be remedied within one year of this grant; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an amendment to a previously granted variance, provided that the square footage of the increase does not exceed 50 percent of existing floor area; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on May 12, 1959, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from December 17, 2004, to expire on December 17, 2014 and to permit modifications to the proposed accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘June 12, 2006’-(3) sheets and ‘August 14, 2006’-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 17, 2014;

THAT the attic space shall be for storage use only;

THAT the height of the attic space shall not exceed 7’-6”;

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

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

THAT DOB shall review all signage for compliance with C2-5 zoning district regulations;

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

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

(DOB Application No. 200919355)

Adopted by the Board of Standards and Appeals, August 22, 2006.

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: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for an accessory parking lot to an eating and drinking establishment, which expired on April 10, 2004; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

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

WHEREAS, on April 10, 1984, the Board granted an application to permit accessory parking to an eating and drinking establishment, on a site within R3-1 (C1-2) and R3-1 zoning districts; and

WHEREAS, the eating and drinking establishment is located within the C1-2 overlay portion of the zoning lot; and

WHEREAS, this grant was subsequently extended for a ten-year term to expire on April 10, 2004; and

WHEREAS, at hearing, the Board asked the applicant to make repairs to the sidewalk and fence; and

WHEREAS, the applicant responded that the property was about to be sold and that the new owner would make all required repairs; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 10, 1984, so that as amended this portion of the resolution shall read: “to grant an extension of term for an additional term of ten years from the expiration of the prior grant, to expire on April 10, 2014; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘August 9, 2006’-(1) sheet; and *on further condition*:

THAT the fence and sidewalk will be maintained in good repair;

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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. 500828063)

Adopted by the Board of Standards and Appeals, August 22, 2006.

301-85-BZ

APPLICANT – Francise R. Angelino, Esq., for 58 East 86th Street, LLC, owner.

SUBJECT – Application April 25, 2006 – Application for an extension of term for a previously approved use variance which allowed ground floor retail at the subject premises located in a R10(PI) zoning district. In addition the application seeks a waiver of the Board's Rules and Procedures for the expiration of the term on February 11, 2006.

PREMISES AFFECTED – 58 East 86th Street, South side East 86th Street between Park and Madison Avenues, Block 1497, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino.

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 extension of term for ground floor and cellar retail use, which expired on February 11, 2006; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, on February 11, 1986, the Board granted an application to permit ground floor retail use in a five-story and penthouse mixed-use building in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, subsequently, the Board granted several extensions of term and amendments, most recently on April 30, 1996 for a term of ten years, expiring on February 11, 2006; and

WHEREAS, at hearing, the Board asked the applicant to

confirm whether conditions of the previous grants, specifically that there be a separation between the residential use and commercial use in the cellar were in effect; and

WHEREAS, the Board notes that while the storage spaces are separate, the commercial and residential uses share access to the cellar; and

WHEREAS, the applicant responded that the layout was approved by the Board to satisfy the condition of the grant and a Certificate of Occupancy has been obtained based on the approved plans; and

WHEREAS, further, the applicant represents that the configuration has been maintained since the original grant; and

WHEREAS, specifically, the applicant states that there is a door with a panic bar separating the two areas in the cellar; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested extension of term with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated February 11, 1986, so that as amended this portion of the resolution shall read: “to grant an extension of term for an additional term of ten years from the expiration of the prior grant, to expire on February 11, 2016; *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.”

(Alt. 468-81)

Adopted by the Board of Standards and Appeals, August 22, 2006.

197-00-BZ, Vol. II

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street Inc., lessee.

SUBJECT – Application November 2, 2005 – Pursuant to ZR §73-11 and ZR §73-36 Amendment to a previously granted Physical Culture Establishment (Equinox Fitness) for the increase of 4,527 sq. ft. in additional floor area.

PREMISES AFFECTED – 420 Lexington Avenue, 208’-4” north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

MINUTES

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, which permitted the establishment of a physical culture establishment (PCE), to permit an increase in floor area; and

WHEREAS, a public hearing was held on this application on June 20, 2006 after due notice by publication in the *City Record*, with continued hearing on August 8, 2006, and then to decision on August 22, 2006; and

WHEREAS, the site is located on the west side of Lexington Avenue between 43rd and 44th Streets; and

WHEREAS, the zoning lot is improved with a 30-story commercial building and is within a C5-3 zoning district within the Special Midtown District; and

WHEREAS, on December 5, 2000, the Board granted a special permit under the subject calendar number to allow the establishment of a PCE within portions of the first floor and first floor mezzanine of the existing 30-story commercial building known as the Graybar Building; and

WHEREAS, the grant was for a term of ten years, to expire on December 4, 2010; and

WHEREAS, the PCE is operated as an Equinox Fitness facility; and

WHEREAS, as approved and constructed, the PCE occupies a total of 28,570 sq. ft. of floor area with 10,950 sq. ft. on the first floor, 11,750 sq. ft. on what is known as the upper first floor, and 5,870 sq. ft. on the mezzanine; and

WHEREAS, the applicant proposes to enlarge the existing PCE to include the addition of 2,248 sq. ft. on the first floor, 1,510 sq. ft. on the upper first floor, and 2,023 sq. ft. on the mezzanine level; and

WHEREAS, the proposed changes will result in a total increase of 5,781 sq. ft. of floor area occupied by the PCE from 28,570 sq. ft. to 34,351 sq. ft.; and

WHEREAS, the additional space will include a new yoga studio on the first floor, cardiovascular equipment and stretching area on the upper first floor, and new therapy and treatment areas on the mezzanine floor; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; 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 December 5, 2000, so that as amended this portion of the resolution shall read: "to permit an increase in floor area occupied by the PCE on the first floor, upper first floor, and mezzanine level *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received July 25, 2006'-(5) sheets; and *on further condition*:

THAT the floor area of the PCE post-enlargement shall

not exceed 34,351 sq. ft.;

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

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 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. 102688557)

Adopted by the Board of Standards and Appeals, August 22, 2006.

59-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family house located in the bed of mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of mapped street thereby making three two-family dwellings. Premises is located within an R3-2 Zoning District. Companion cases 160-02-A II and 27-06-A. PREMISES AFFECTED – 23-81 89th Street, 583.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 6, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

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 seeks to amend the Board's previous grant made under the subject calendar number on June 18, 2002, which, pursuant to General City Law § 35, permitted a two-family home to be built in the bed of a mapped street (24th Avenue); and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, the prior grant was made in conjunction with a grant for an adjacent two-family home, under BSA Cal. No. 160-02-A II; this grant is also being amended; and

WHEREAS, the developer now also proposes an additional two-family home and has filed a new GCL

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application under BSA Cal. No. 27-06-A; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the Board of Standards and Appeals waives reopens and amends the resolution, dated June 18, 2002, so that as amended this portion of the resolution shall read: "to grant an amendment to the previously approved site-plan to reflect a subdivision; *on condition* that all work and site conditions shall comply with drawings marked "Received August 17, 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 a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

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

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

THAT 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. 402199152)

Adopted by the Board of Standards and Appeals, August 22, 2006.

160-02-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a two family dwelling in the bed of a mapped street (24th Avenue). Proposal seeks to add an additional two family dwelling in the bed of a mapped street thereby making three two family dwellings. Premises is located within an R3-2 Zoning District .Companion cases 59-02-A and 27-06-A.

PREMISES AFFECTED – 24-01 89th Street, 532.67' northeast of the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 8, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

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 seeks to amend the Board's previous grant made under the subject calendar number on June 18, 2002, which, pursuant to General City Law § 35, permitted a two-family home to be built in the bed of a mapped street (24th Avenue); and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, the prior grant was made in conjunction with a grant for an adjacent two-family home, under BSA Cal. No. 59-02-A II; this grant is also being amended; and

WHEREAS, the developer now also proposes an additional two-family home and has filed a new GCL application under BSA Cal. No. 27-06-A; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the

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Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the Board of Standards and Appeals waives reopens and amends the resolution, dated June 18, 2002, so that as amended this portion of the resolution shall read: "to grant an amendment to the previously approved site-plan to reflect a subdivision; *on condition* that all work and site conditions shall comply with drawings marked "Received August 17, 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 a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

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

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

THAT 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. 402199161)

Adopted by the Board of Standards and Appeals, August 22, 2006.

27-06-A

APPLICANT – Carlos Aguirre

SUBJECT – Application February 16, 2006 – Application filed under Section 35 of the General City Law to allow the construction of a two family dwelling located within the bed of a mapped street (24th Avenue). Premises is located within a R3-2 Zoning District. Companion cases 59-02-A II and 160-02-A II.

PREMISES AFFECTED – 23-83 89th Street, 561.67' northeast, the corner of Astoria Boulevard and 89th Street, Block 1101, Lot 7, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carlos Aguirre.

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 February 13, 2006, acting on Department of Buildings Application No. 402199170 which reads, in pertinent part:

"As per site survey and information on PW-1 from Borough President's Office, portion of the site is within bed of a mapped street. Proposed construction within bed of a mapped street is contrary to GCL 35 and not permitted."; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, this application is filed in conjunction with two applications to amend prior grants, under BSA Cal. Nos. 59-02-A II and 160-02-A II; and

WHEREAS, the prior grants permitted the construction of two two-family homes adjacent to the two-family home proposed in this application; and

WHEREAS, the amendment applications are necessary to reflect the further subdivision of the site to accommodate the new home, which the applicant represents will comply with applicable zoning regulations; and; and

WHEREAS, by letter dated July 31, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 25, 2006, the Department of Environmental Protection (DEP) has indicated that amended Drainage Plan No. 28 (34)-3 calls for a future 12"-diameter combined sewer on 24th Avenue between 89th Street and 90th Place; and

WHEREAS, in contemplation of this future plan, DEP requires that the applicant post a security bond; the applicant must also amend the drainage plan; and

WHEREAS, in response to DEP concerns, the applicant has agreed to post a bond and amend the drainage plan; and

WHEREAS, by letter dated June 20, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 13, 2006, acting on Application No. 402199170, 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 August 17, 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 a security bond shall be posted pending DEP's approval of the amended drainage plan;

THAT DOB shall not issue any building permit prior to

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the receipt of the amended drainage plan;

THAT subdivision of the property shall be as approved by DOB; the Board is not approving any subdivision;

THAT all conditions indicated on prior resolutions shall remain in effect, to the extent that they are applicable;

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

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

THAT 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, August 22, 2006.

413-50-BZ, Vol. II

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

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

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

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

308-64-BZ

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

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

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

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ron Mandel.

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

405-71-BZ

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

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

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

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

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

670-83-BZ

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

SUBJECT – Application July 10, 2006 – Pursuant to ZR §72-01 and §72-22 to Re-open and Amend the previous BSA resolution for the Extension of Term for a non-conforming UG6 (Talent Agency in the basement of a Residential Building for ten years which expired on May 22, 2005). The application is also seeking a Waiver of the Rules of Practice and Procedure for filing more than a year after the expiration of the term. The premise is located in an R8 (Special Clinton District) zoning district.

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

COMMUNITY BOARD #4M

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 September 26, 2006, at 10 A.M., for decision, hearing closed.

144-89-BZ, Vol. III

APPLICANT – Law Office of Howard Goldman, LLP, for 93rd Street Associates LLC, owner.

SUBJECT - This application is to reopen and to Extend the Time to Complete Construction on a 10 story residential building with retail on the ground floor which expired on December 15, 2003 and a Waiver of the Rules of Practice and Procedure. The premise is located in a C2-8(TA) zoning district.

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PREMISES AFFECTED – 1800 Second Avenue, between 93rd and 94th Street, Block 1556, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Chris Wrights.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

129-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Town Sports International, Inc., owner.

SUBJECT – Application September 21, 2004 – Pursuant to ZR 73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) and an Amendment to legalize modifications to the interior layout located in a five-story and cellar commercial building. This companion to BSA Cal. 130-93-BZ.

PREMISES AFFECTED – 151-155 East 86th Street, north side of East 86th Street, 62’ east of Lexington Avenue, Block 1515, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

130-93-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 161 East 86th Street, LLC, owner; TSI East 86th Street, Inc., lessee.

SUBJECT – Application September 21, 2004 – Pursuant to ZR §73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) which occupies the fifth floor and mezzanine of a five-story commercial building. This Application is also seeking an Amendment to legalize the expansion in floor area of the P.C.E. into the third and fourth floors of the commercial building. This is companion to BSA Cal. 129-93-BZ.

PREMISES AFFECTED – 157-161 East 86th Street, north side of East 86th Street, 139’ of Lexington Avenue, Block 1515, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

331-98-BZ

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

PREMISES AFFECTED – 1426-1428 Fulton Street, Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for continued hearing.

111-01-BZ

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

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

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

COMMUNITY BOARD#17BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Esme Trotman and Marva Straker.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for continued hearing.

149-01-BZ, Vol. II

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

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

PREMISES AFFECTED – 88-90 Jane Street, North side of

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West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik and Doris Diether, Community Board #2.

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 19, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

361-05-BZY

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

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

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

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

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 foundation of a two and three-story residential building; and

WHEREAS, this application was brought concurrently with a companion application under BSA Cal. No. 366-05-A, decided the date hereof, which is a request for a finding that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, the Board also notes that the premises was the subject of an appeal filed on August 20, 2003 under BSA Cal. No. 263-03-A, challenging a Department of Buildings determination refusing to revoke a building permit issued under DOB Application No. 301172184 on July 21, 2003 (the “Permit”); and

WHEREAS, this appeal was dismissed as moot on July

18, 2006, since the owner worked with DOB to modify its plans to conform to the relevant issues raised by the appeal; and

WHEREAS, a public hearing was held on this application on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 20, 2006, July 18, 2006, and then to decision on August 22, 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, Concerned Citizens of Greenwood Heights, and the South Slope Community Group appeared in opposition to the application; and

WHEREAS, additionally, certain neighbors, represented by counsel, opposed this application; this group of neighbors was also represented by the same counsel in BSA Cal. 263-03-A; and

WHEREAS, the applicant states that the subject premises fronts on 8th Avenue between Prospect Avenue and Windsor Place, on a lot having 18,422 sq. ft. of lot area, with frontage of approximately 63 ft. and a depth of 348 ft.; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two and three-story residential building with a cellar and basement (the “Building”); and

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

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

WHEREAS, the subject premises is currently located within an R5B zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Building complies with the former R5 zoning bulk parameters; specifically, the proposed Floor Area Ratio was 1.65, which was permitted; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, because the site is now within an R5B district, the Building would not comply with the maximum FAR of 1.35; and

WHEREAS, because the Building violated this provision of the new R5B zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 17, 2005 for the Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: “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

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development or a major 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; or (b) in the case of a major development, the foundations for at least one building of the development 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, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, as noted above, the validity of the Permit was challenged in BSA Cal. No. 263-03-A; and

WHEREAS, well prior to the Enactment Date, the owner modified plans for the Building and consequently DOB never revoked the Permit; as noted above, BSA Cal. No. 263-03-A was dismissed as moot; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant claims that excavation was completed and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, as to excavation, the applicant claims that the front portion of the site was excavated, and then backfilled; and

WHEREAS, opposition to this application submitted a series of photos that purportedly shows visible soldier piles in the front section of the site, and further shows that soil was not excavated or backfilled; and

WHEREAS, opposition also submitted a diagram showing where on the site excavation purportedly was not completed, particularly near those areas where shoring of the adjacent properties occurred; and

WHEREAS, the Board notes that the applicant refutes the relevance of the photos and diagrams, and the Board agrees that they are not conclusive; and

WHEREAS, however, based upon its review of the record and the opposition submissions, the Board finds that there is no sufficiently conclusive evidence that would allow it to determine that excavation was fully completed; and

WHEREAS, as to substantial progress on the foundation, the Board has only considered work completed as of the Enactment Date and excluded all remedial work ordered by

DOB since that date, as well as all illegal work done during stop-work orders, or work done prior to resolution of the outstanding issues related to the Permit; and

WHEREAS, the applicant represents that after the resolution of the issues related to the Permit, the owner of the site has engaged in dewatering, shoring and sheeting, and installed 164 out of the 200 anticipated piles; and

WHEREAS, however, the Board observes that no other element of the foundation system has been constructed; and

WHEREAS, specifically, the Board notes that to complete the foundation, the developer would have to install the remaining 36 piles, five mini-piles, all the footings, the foundation walls, the detention tanks, and concrete ramps and slabs; and

WHEREAS, the Board also observes that no concrete has been poured for these elements; and

WHEREAS, when the work completed is weighed against the work remaining, the Board cannot conclude that substantial progress was made on foundations; and

WHEREAS, in sum, the Board observes that the completed physical work represents a small percentage of the overall foundation construction, and does not compare to the degree of work that the Board typically reviews in a successful application under ZR § 11-331; and

WHEREAS, further, while some labor and material costs related to dewatering, shoring and sheeting might be relevant to the Board’s consideration of a common law vesting application, these items are not appropriately characterized as part of the actual foundation system for the Building; and

WHEREAS, therefore, based upon the record before it, the Board determines that substantial progress on the foundation was not made; and

WHEREAS, accordingly, because the Board cannot determine whether excavation was complete and because the Board finds that substantial progress was not made on the foundation, the applicant is not entitled to relief pursuant to ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application under BSA Cal. No. 366-05-A, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the Permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to a favorable determination of BSA Cal. No. 366-05-A.

Therefore it is Resolved that this application to renew DOB Permit No. 301172184 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, August 22, 2006.

366-05-A

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

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

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

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete a proposed development at the referenced premises; and

WHEREAS, this application was brought concurrently with a companion application brought under BSA Cal. No. 361-05-BZY (the “BZY Application”), decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, the Board also notes that the premises was the subject of an appeal filed on August 20, 2003 under BSA Cal. No. 263-03-A (the “Appeal”), brought by certain neighbors, represented by counsel (hereinafter, the “Neighbors”); and

WHEREAS, the substance of the Appeal was a challenge to a Department of Buildings determination refusing to revoke a building permit issued under DOB Application No. 301172184 on June 11, 2002 (the “Permit”); and

WHEREAS, the Appeal was dismissed as moot on July 18, 2006, since the applicant worked with DOB to modify its plans to conform to the relevant issues raised by the appeal; and

WHEREAS, a public hearing was held on this application on April 25, 2006 after due notice by publication in *The City Record*, with continued hearings on June 20, 2006, July 18, 2006, and then to decision on August 22, 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, Concerned Citizens of Greenwood Heights, and the South Slope Community Group, and various elected officials appeared in opposition to the application; and

WHEREAS, additionally, the Neighbors appeared in opposition; the arguments made by the Neighbors are discussed below; and

WHEREAS, the applicant states that the subject premises fronts on 8th Avenue between Prospect Avenue and Windsor Place, on a lot having 18,422 sq. ft. of lot area, with frontage of approximately 63 ft. and a depth of 348 ft.; and

WHEREAS, the subject premises is currently located within an R5B zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, under the Permit, the developer of the site seeks to construct a new two and three-story residential building with a cellar and basement (the “Building”); and

WHEREAS, the Building complies with the former R5 zoning bulk parameters; specifically, the proposed Floor Area Ratio was 1.65, which was permitted; and

WHEREAS, however, on November 16, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Park Slope South rezoning, which rezoned the site to R5B, as noted above; and

WHEREAS, because the site is now within an R5B district, the Building would not comply with the maximum FAR of 1.35; and

WHEREAS, since the Building violated this provision of the new R5B zoning district and the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a stop work order on November 17, 2005 as to the Permit; and

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

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

WHEREAS, the applicant states that that construction proceeded as follows: (1) excavation, dewatering, shoring, and sheeting began in mid-2003; (2) stop work orders were issued by DOB, and the owner endeavored to resolve the underlying issues; (3) the Neighbors filed the Appeal in August of 2003; (4) during the course of the hearing process on the Appeal, the owner continued to work with DOB in order to come up with an acceptable plan revision; (5) in December of 2004, DOB approved revised plans, and in February of 2005, DOB renewed the Permit under these revised plans; (6) revised structural plans were approved on August 11, 2005; (7) excavation, sheeting, shoring, and dewatering resumed in September 2005, and pile installation commenced; and (8) 164 of the 200 required piles were installed as of the Enactment Date; and

WHEREAS, DOB confirmed the issuance of the stop work orders, and submitted into the record a detailed description of when the Permit was in effect, and when work under it was subject to stop-work orders; and

WHEREAS, the applicant claims that much of the difficulties experienced during construction were caused by

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political intervention and overzealous community members; and

WHEREAS, however, the Board notes that there is no evidence of malfeasance on the part of any of the opposition, and that neighbors to a construction site are entitled to ask DOB to investigate construction and plan-related concerns; and

WHEREAS, further, the applicant conceded that many of the problems experienced during development related to a contractor that the owner ultimately dismissed from the project; and

WHEREAS, the applicant also conceded that the plans under which the Permit was initially obtained reflected zoning non-compliances and were subsequently revised; and

WHEREAS, that being said, the Board agrees with the applicant that neither the initial contractor-related problems nor the plan-related problems that arose during this development project are fundamental impediments to a finding of vested rights under the common law; and

WHEREAS, the Board notes that development difficulties that require construction and plan modifications are not rare occurrences in projects of this size within the City, and that DOB enforcement action occurs fairly frequently because of them; and

WHEREAS, in sum, no development project proceeds perfectly, given the human element involved, and a common law vesting determination is not foreclosed simply because problems arise; and

WHEREAS, the Board also agrees with the applicant that the owner here endeavored to resolve the plan issues with DOB while the Appeal was pending, and also obtained a new contractor; and

WHEREAS, the Board further observes that construction on this site was contemplated and initiated more than four years prior to the rezoning; this is not the case of a developer initiating development days prior to a zoning change in an effort to beat the clock (even though it is apparent that work proceeded up to the date of the rezoning after the plan revisions were accepted by DOB); and

WHEREAS, however, while an application for a common law vesting determination may still be made under these circumstances, the Board finds that some acknowledgement of the problems with the initial construction and with the initial plans must be reflected in its analysis; and

WHEREAS, this is particularly true since the applicant concedes that some construction work had to be redone, that some was remedial work performed to address violations, and that many of the soft costs relate to the plan revisions; and

WHEREAS, thus, as discussed in more detail below, the applicant has separated the relevant work performed and expenditure incurred prior to the acceptance of the plan revision by DOB in December of 2004 versus thereafter, and made other appropriate deductions; and

WHEREAS, this ensures that the Board is not according any special exceptions in its analysis because the

owner experienced construction difficulties; and

WHEREAS, additionally, the Board has made further refinements above and beyond those made by the applicant; and

WHEREAS, the Board also notes that in its evaluation of this application, no work or expenditure relating to construction performed contrary to stop-work orders, or that was otherwise unauthorized, has been credited; and

WHEREAS, in any event, the Board notes that no violations for after-hours or weekend work were issued by DOB after December of 2004; and

WHEREAS, in fact, by carving out consideration of relevant work and expenditure prior to the approval of the plan revisions in December of 2004, the applicant has carved out any illegal work and expenditures; and

WHEREAS, notwithstanding the separation of work and expenditures, the applicant requests that the Board find that based upon the amount of work performed, and the amount of financial expenditures, including irrevocable commitments, as well as the serious economic loss the owner would face if compelled to comply with the new zoning, the owner has a vested right to continue construction and finish construction of the Building; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the completed work was conducted pursuant to a valid permit; and

WHEREAS, as discussed above, DOB and the owner resolved all outstanding issues related to the Permit as of December 2004; the resolution of these issues led to the dismissal of the Appeal; and

WHEREAS, while on two occasions DOB issued a notice of intent to revoke the Permit, at no point was the Permit actually revoked and then reinstated; and

WHEREAS, further, on both occasions, the owner successfully engaged DOB to resolve the underlying problems; and

WHEREAS, accordingly, the Board confirms DOB's acceptance of the validity of the Permit for purposes of vesting; and

WHEREAS, assuming that a valid permit has been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of a zoning change, and where serious loss will result if the owner is denied the right to proceed under the prior zoning, and; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been

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undertaken and substantial expenditures made prior to the effective date of the ordinance.”; and

WHEREAS, however, as discussed by the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the applicant states that after the issuance of the revised permit in December of 2004 and the re-commencement of work on the site in August of 2005, the applicant completed the installation of 164 out of 200 required piles; and

WHEREAS, the applicant also states that significant dewatering, sheeting, and shoring efforts were undertaken; and

WHEREAS, in support of this statement, the applicant has submitted pictures, invoices for labor and material, and affidavits from construction personnel; and

WHEREAS, the Board notes that dewatering, shoring, and sheeting activities were excluded from its assessment of the “substantial progress made on foundations” standard as set forth in ZR § 11-331, since they may not be reflected in the actual permanent foundation construction (with the exception of water retention tanks, which in any case have not been installed on the site yet); and

WHEREAS, however, such activities do fall under the rubric of “construction”, and thus may be properly analyzed by the Board in the context of the instant application; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed, said work consisting of piles installation, dewatering, shoring and sheeting; and

WHEREAS, the Board’s conclusion is based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed the cases cited in the applicant’s December 19, 2005 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Neighbors contend that substantial construction has not been performed, and offer two primary arguments in support of this contention: (1) that the amount of work completed is not substantial; and (2) that the Board must apply the statutory standard of “substantial progress on foundations” notwithstanding its distinction from the common law standard of “substantial construction”; and

WHEREAS, as to the first argument, as noted above, the Board has compared the degree of construction work completed here to that discussed in relevant cases; and

WHEREAS, the Board observes that the courts of New

York have found vesting in instances where only minimal work has been completed, as long as such work was permitted and expenditures had been made; and

WHEREAS, in particular, the Board cites to *Ortenberg v. Bales*, 229 N.Y.S. 550 (1928), where the developer had performed substantial excavation and entered into contracts, but had not performed any foundation work; *Pelham View v. Switzer*, 224 N.Y.S. 56 (1927), where only excavation was completed, and *Hasco Electric Corp. v. Dassler*, 144 N.Y.S. 857 (1955) where site clearance and excavation was complete, but no foundation construction had been commenced; and

WHEREAS, in all of these cases, the court found that the owner’s rights had vested; and

WHEREAS, while there are other cases where much more work was performed, none of them establish a bright line rule as to how much construction must be completed before a finding of “substantial construction” may be made; and

WHEREAS, further, the Board notes that the other components of the doctrine – a valid permit, economic loss and substantial expenditure – must be taken into consideration: it is not appropriate for the Board to ignore these factors and focus only on a comparison of completed construction work versus what remains, as would be the case under a statutory application; and

WHEREAS, instead, the appropriate comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that installation of piles, dewatering, sheeting, and shoring is substantial; and

WHEREAS, in support of the second argument - that the Board must apply the statutory “substantial progress on foundations” standard in a common law vesting application - the Neighbors cite to *Ellington Construction Corp. v. Zoning Board of Appeals*, 27 NY 2d 114 (1990); and

WHEREAS, the Neighbors read *Ellington* to stand for the proposition that where the legislature has enacted a statutory vesting scheme, a zoning board must pay heed to the legislative intent as the “controlling principal”; and

WHEREAS, the Neighbors conclude that the Board must apply the “substantial progress on foundations” standard set forth in ZR § 11-331; and

WHEREAS, however, as explained by the applicant, *Ellington* does not stand for this proposition at all; and

WHEREAS, in fact, the *Ellington* court explained that the common law vesting rules should inform the application of the subject exemption period statute; this is the opposite of what the Neighbors argue; and

WHEREAS, the Board agrees that *Ellington* does not require the Board to apply the statutory standard in its review of this case; and

WHEREAS, this conclusion is borne out by the Board’s review of the *Kadin* opinion, cited above; and

WHEREAS, the *Kadin* court deals specifically with ZR § 11-30 et seq., and explicitly held that a common law remedy exists separate and apart from the statute; and

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WHEREAS, the court stated: “New York City Zoning Resolution § 11-331 does not codify or abolish the common-law doctrine of vested rights. The common-law doctrine is a broader consideration than that posited in that section of the resolution, which confines itself to whether or not certain physical stages of construction relating to excavation and the foundation have been completed. While the general standard in determining vested rights is substantial construction and substantial expenditure made prior to the effective date of the zoning amendment . . . unlike New York City Zoning Resolution § 11-331, ‘[t]here is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’”;

WHEREAS, the Board has neither the desire nor the authority to ignore such clear precedent; and

WHEREAS, the Board observes that if Ellington were applied as suggested by the Neighbors, the precedent of Kadin would be eviscerated, and a common law application would be a pointless and purposeless administrative exercise when, as occurred here, a statutory application had been made as well; and

WHEREAS, in sum, the Board rejects both of the Neighbor’s arguments as to the substantial construction finding; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, in its July 25, 2006 submission, the applicant states that the total expenditure was \$4.77 million out of a budgeted \$13.5 million; and

WHEREAS, the applicant notes that this calculation does not include duplicative costs, but includes costs related to demolition, site preparation, as well as costs related to construction performed after DOB approved the plan revisions in December 2004; and

WHEREAS, this submission also provides a detailed explanation of various other soft cost deductions made to avoid counting duplicative costs and costs related to the Appeal; and

WHEREAS, the Board generally finds that the deductions made by the applicant are appropriate and satisfy the concerns of the Board that no credit be given to the expenditures made to rectify the prior construction or plans; and

WHEREAS, however, the Board notes that the \$4.77 million total includes the purchase price of the site; and

WHEREAS, the applicant states that the purchase price may properly be included in an analysis of expenditure, since it was purchased long before the proposed rezoning; and

WHEREAS, the Board agrees that there is no impediment to consideration of purchase price, but also notes that it is not required; and

WHEREAS, the Board has not analyzed purchase price in its past consideration of vested rights cases, and declines to do so here; and

WHEREAS, while it is reasonable to conclude that a purchase price is based upon the zoning in effect at the time of the purchase, the Board notes that this is not always the case,

and further observes that not all transactions are recent or arm’s-length; and

WHEREAS, thus, the Board finds that the relevance of purchase price may be difficult to ascertain in many circumstances; and

WHEREAS, the Board concludes that it better to assess expenditure in light of total development costs absent purchase price; and

WHEREAS, here, the stated acquisition price is \$1.69 million; subtracting this amount from both the expenditure total and the development costs means that the owner expended approximately \$3.08 million out of \$11.81 million; and

WHEREAS, the Board also notes that the amount of expenditure claimed includes costs related to obtaining the various mortgages on the property and the interest payments on them, which totals \$2.09 million; and

WHEREAS, the Neighbors argue that such costs should not be included, and cite to *McBride v. Town of Forestburgh*, 54 Ad 2d 346 (1976) for the proposition that expenses incurred prior to the commencement of the actual construction do not create a vested right; and

WHEREAS, the applicant responds that this an improper reading of *McBride*, and argues instead that this case only stands for the proposition that such costs alone cannot sustain a vested rights determination; and

WHEREAS, the Board agrees with the applicant, since it has previously considered pre-construction soft costs in its deliberation, the basis being the numerous court opinions holding that such soft costs can be folded into the analysis (see e.g. *Wheatland v. Esso Standard Oil Co.*, 150 N.Y.S.2d 130 (1956) and *Reichenbach v. Windward at Southampton*, 364 N.Y.S.2d 283 (1975)); and

WHEREAS, nonetheless, the Board is troubled by the inclusion of the full amount of these mortgage costs in the calculation, particularly the interest payment, since the cumulative amount of said payments has increased due to the lengthy construction process, which the applicant concedes is due in part to construction and plan-related problems; and

WHEREAS, accordingly, like acquisition cost, the Board finds it prudent to deduct these costs from both the stated expenditures and the overall development budget; and

WHEREAS, after making the relevant subtractions of this \$2.09 million cost, the Board concludes that the applicant expended approximately \$990,000 out of a total cost (minus acquisition and mortgage costs) of \$9.72 million (or approximately 10 percent); and

WHEREAS, the Board considers a million dollar expenditure substantial in and of itself, and not minimal when compared to the total development costs; and

WHEREAS, the Board’s consideration is again guided by cases considering how much expenditure is needed to vest rights under the prior zoning, as well as the expenditure percentages; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the loss of floor area that would result if vesting was not permitted (from an FAR of 1.65 to 1.35) would lead to the elimination of approximately

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5,527 sq. ft. of floor area; and

WHEREAS, the applicant states that this would lead to financial loss because: (1) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and (2) approximately 18 percent of sellable floor area would be lost; and

WHEREAS, the Board notes that a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, here, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB in December of 2004 could not be recouped; and

WHEREAS, additionally, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, here, the Board agrees that a significant reduction in sellable floor area in a development of this size will result in a serious loss; and

WHEREAS, the Board notes that its conclusion that serious loss would occur is in consideration of the carve-out of costs related to the need to revise the plans and redo some of the construction work; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

WHEREAS, the Neighbors and other opposition expressed additional concerns about various aspects of this application; and

WHEREAS, specifically, specific neighbors of the site allege that the construction on the site has caused damage to their properties, and that contrary to the assertions of the applicant, the owner has not resolved this dispute or otherwise worked towards such resolution; and

WHEREAS, while the applicant disputes these claims, the Board finds that this particular dispute is best resolved in another forum; and

WHEREAS, further, the Board again notes that given the built conditions within the City, it is not uncommon for allegations of damage to adjacent property to be made, and that such allegations, even if substantiated, would not prevent a finding of common law vested rights; and

WHEREAS, while the Board was not swayed by many of the opposition arguments, it nevertheless understands that the community and the elected officials worked diligently on the Park Slope South rezoning and that the Building does not comply with the new R5B zoning parameters; and

WHEREAS, the Board further understands that neighbors of the site are unhappy with the developer; and

WHEREAS, however, the applicant has met the test for a common law vested rights determination, and the Board has determined that the equities in this case, given the established serious loss, and the degree of work performed and expenditures made, weigh in the favor of the owner, particularly since all visible bulk parameters of the proposed building (i.e. height, yards, and setbacks) would be identical under either the R5 or the R5B zoning requirements; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the Neighbors and other opposition, as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 301172184, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 22, 2006.

57-06-A

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

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

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Willy Yuin.

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 March 13, 2006, acting on Department of Buildings Application No. 500821444, reads, in pertinent part:

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“The street giving access to proposed construction of a new warehouse building with office space (Use Group16D) in M1-1 Zoning District is not duly placed on the official map of the City of New York and therefore referred to Board of Standards and Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on August 22, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 22, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, March 13, 2006, acting on Department of Buildings Application No. 5008211444, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 27, 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, August 22, 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 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, Department of Buildings.

THE VOTE TO REOPEN HEARING –

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for decision, hearing closed.

161-05-A

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

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

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Schwiekist

For Opposition: Adam Rothkrug and Robert Caneco.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 19, 2006, at 10 A.M., for decision, hearing closed.

356-05-A & 357-05-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

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

For Opposition: Nathan Cohen, Tracy Conroy, Susan Wagner and Alanna Wagner.

THE VOTE TO CLOSE HEARING –

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

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Negative:.....0
ACTION OF THE BOARD – Laid over to September
12, 2006, at 10 A.M., for decision, hearing closed.

12, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

332-05-A

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

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

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

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to September
26, 2006, at 10 A.M., for continued hearing.

Adjourned: A.M.

333-05-A

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

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

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

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to September
26, 2006, at 10 A.M., for continued hearing.

346-05-A

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

SUBJECT – Application December 6, 2005 – Application to
permit an enlargement of a commercial structure located
partially in the bed of a mapped street (Beach 52nd Street)
contrary to Section 35 of the General City Law. Premises is
located within the C8-1 Zoning district.

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

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

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 22, 2006
1:30 P.M.**

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

ZONING CALENDAR

286-04-BZ & 287-04-BZ

CEQR #05-BSA-029Q & CEQR #05-BSA-030Q

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 –

For Applicant: Adam Rothkrug.

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, the decision of the Borough
Commissioner, dated July 20, 2004, acting on Department of
Buildings Application No. 401599392, reads in pertinent
part:

“Establishment of such amendment now creates a
non-complying zoning lot contrary to Z.R. sections
23-32, for lot width and 23-46, for side yards.”; and

WHEREAS, a public hearing was held on this
application on April 5, 2005 after due publication in *The City
Record*, with continued hearings on January 31, 2006, March
14, 2006, April 25, 2006, June 13, 2006, July 25, 2006, and
then to decision on August 22, 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, these two applications, filed under Z.R. §
72-21, to permit, on an existing zoning lot within an R1-2
zoning district, the subdivision of this lot into two non-
complying zoning lots, the maintenance of an existing one-
family dwelling on one of the non-complying lots, and the
proposed construction of a one-family dwelling on the second
non-complying lot, which is contrary to Z.R. §§ 22-32 and
23-46; and

WHEREAS, the site is currently represented on the
City’s tax map as lot 13; and

WHEREAS, however, as discussed below, this lot is
comprised of two tentative tax lots (tent. lot 13 and the
adjacent tent. lot 15, collectively referred to as the “Site”);
and

WHEREAS, Cal. No. 286-04-BZ relates to lot 13 (85-
78 Santiago), and Cal No. 287-04-BZ relates to lot 15 (85-82
Santiago); and

WHEREAS, the Site is 134.6 ft. by 165.2 ft., with a total
area of 11,475 sq. ft., located on the west side of Santiago
Street, south of McLaughlin Avenue; and

WHEREAS, the Site was originally comprised of two
independent tax lots, lots 13 and 16, which were in joint
ownership; and

WHEREAS, in 1947, lot 16 was developed with a two-
story single-family dwelling; and

WHEREAS, lot 13 was adjacent and to the north of lot
16, and was developed at some point with a garage and pool,
accessory to the single-family dwelling; and

WHEREAS, on an unknown date, these two historical
lots were merged into a single tax lot (the current lot 13), and
the existing improvements remained on the Site; and

WHEREAS, the applicant concedes that as of 1961, the
entirety of the Site was in common ownership; thus, lot 13
was then and is now a single zoning lot; and

WHEREAS, the applicant states that in August of 2002,
the current owner purchased the Site, purportedly with the
intention of subdividing the garage/pool portion from the
house portion, so that a new home could be constructed on
the garage/pool portion; and

WHEREAS, in anticipation of the subdivision, the
owner apparently first went to the City’s Department of
Finance to obtain preliminary approval for a tax lot
subdivision in August 2002; a DOF form (called an RP 604)
dated August 2, 2002, indicates the proposed contours of the
two new tax lots (lot 15 – developed with the existing home,
and lot 13 – developed with the garage/pool); and

WHEREAS, DOB’s Buildings Information System
(“BIS”) indicates that a formal subdivision application was
made in October of 2002, under Job No. 401547938; and

WHEREAS, BIS reveals that a revised RP 604 was
submitted to DOB in late November of 2002; and

WHEREAS, the subdivision application under Job No.
401547938 was approved by DOB on December 4, 2002; and

WHEREAS, a New Building application, made under
Job No. 401599392, for the new home on lot 13, was filed on
January 15, 2003; and

WHEREAS, the applicant has submitted an affidavit
from the architect that handled the subdivision, which
indicates that the New Building application was subject to a
full DOB examination “from January through September
2003”; and

WHEREAS, BIS indicates that some initial objections
as to the application were raised by DOB on January 27,
2003; and

WHEREAS, however, these objections were not
resolved, and no plan approval or permit had been issued as

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of June 13, 2003, on which date the zoning of the site changed from an R2 zoning district to an R1-2 district; and

WHEREAS, because of the rezoning, both of the proposed tentative tax lots would be non-compliant as to lot width and frontage; and

WHEREAS, nonetheless, the owner managed to obtain plan approvals and permits from DOB even after the rezoning; and

WHEREAS, specifically, the above-referenced New Building application was approved on August 29, 2003; and

WHEREAS, additionally, on September 19, 2003, DOB issued permits for foundation, earthwork and fence under Job No. 401599392, and excavation commenced; and

WHEREAS, however, the applicant concedes that the approval and permits were erroneously obtained, because the proposed new home on lot 13 would not comply with R1-2 district regulations concerning frontage and side yards, and the existing home on lot 15 would not comply with frontage, lot area, and side yard requirements; and

WHEREAS, DOB discovered this error and issued a ten-day letter of intent to revoke on October 20, 2003, followed by a revocation of the erroneously issued permits on October 31, 2003; and

WHEREAS, the applicant states that the owner entered into a contract to sell the existing home on lot 13 after the permits were erroneously issued; and

WHEREAS, that applicant alleges that when the permits were revoked, the owner was unable to obtain a release of the contract from the prospective purchaser of lot 13, and following litigation, a judge ordered specific performance and the owner was compelled to convey the home this purchaser; and

WHEREAS, the applicant represents that the subdivision was not recognized by DOB after the rezoning because the owner never legally transferred the property prior to the rezoning date; as discussed below, DOB does not confirm this representation; and

WHEREAS, the applicant then filed a variance application as to lot 15 in 2004, but because it appeared that an appeal would be taken of the court's specific performance order, the Board removed the case from calendar; and

WHEREAS, the owner did not pursue an appeal of the specific performance order, and the two instant companion applications were filed; and

WHEREAS, the Queens Borough President, Community Board No. 8, Queens, New York State Assemblyman Mark S. Weprin, New York State Senator Frank Padavan, and the Holliswood Civic Association recommends disapproval of this application; and

WHEREAS, the applicant initially alleged that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Site in strict compliance with underlying district regulations: (1) there is unique history with respect to development of the site; and (2) the site is unusually large for the area to be developed with only one house; and

WHEREAS, as to the unique history argument, the applicant asserts that the Site was initially developed with a

house only on a portion of the site because the original owner always intended to develop the other portion of the site as a separate zoning lot; and

WHEREAS, the applicant claims that unlike the other smaller lots in the area, that are developed with one home situated in the middle of the lot, the Site was developed with one home off to the side; the applicant claims that this supports his argument that the history of the lot makes the Site unique; and

WHEREAS, however, this "history of development" does not speak to any issue inherent in the site that prevents the applicant from developing it, or maintaining it, in accordance with the current zoning; and

WHEREAS, further, the actual history of development on the Site belies the applicant's claim: by the applicant's own admission, the Site was occupied for many years as a single-family home with an accessory garage and pool, and remains viable for such use;

WHEREAS, moreover, the more recent history of development of this site is not a legitimate unique factor for a variance application because it concerns the personal and legal problems of the owner rather than any unique features of the Site; and

WHEREAS, the Board notes that it is established under New York case law that uniqueness and unnecessary hardship must relate to the land and not to the personal problems of the landowner; and

WHEREAS, as to lot size, the Board does not consider the Site's size to be grounds for uniqueness, since it does not cause any hardship whatsoever; and

WHEREAS, further, while the applicant attempted to connect the size of the lot to its ability to sustain two dwellings under the prior zoning, this does not mean that it currently suffers a hardship under the existing zoning; and

WHEREAS, the Board notes that the option exists to enlarge the existing home in order to utilize available floor area generated by the size of the Site, or to use the part of the Site not currently developed for accessory uses to the existing home (such as a pool or garage); and

WHEREAS, accordingly, the Board rejects the applicant's contention that the history of development on the Site or its size constitutes unique physical conditions that create practical difficulties or unnecessary hardship; and

WHEREAS, the applicant also suggested two other arguments that do not relate to any physical condition of the Site: (1) that the owner relied in good faith on DOB's erroneous foundation permit in entering into a contract of sale; and (2) that tentative lots 13 and 15 became separate zoning lots of record as of the date of DOB's approval of the Subdivision Improvement application (December 4, 2002); and

WHEREAS, the Board has considered the applicant's purported reliance on the erroneously issued DOB foundation permit – pulled by the owner's representative *after* the rezoning – and whether, if reliance was proven, this could provide the basis for a grant of a variance; and

WHEREAS, as a threshold matter, the Board observes that it is the burden of the owner and his or her filing

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representative (here, an architect) to properly ascertain the zoning district in which the property is located when applying to DOB for a permit; and

WHEREAS, a filing representative should be charged with constructive notice of the zoning district designation in which the development site is located, especially since a change in the district would likely have a substantive effect on a development proposal; and

WHEREAS, thus, an owner (through his or her representative) cannot be said to have acted in good faith if it did not complete its own diligence in preparing its application before DOB; and

WHEREAS, an opinion of the Appellate Division, Second Department, supports this position: in analyzing whether the petitioners acted in “good faith” in relying upon a permit, the court determined that because the petitioners did not exercise reasonable diligence to ascertain what the pertinent zoning provisions were, they did not meet the “good faith” standard and were not entitled to rely on the permit. See *In the matter of D’Allesandro v. Board of Zoning and Appeals for the Village of Westbury*, 577 N.Y.S.2d 79 (2nd Dept 1991); and

WHEREAS, further, the Board notes that none of the cases discussing good faith reliance concerns a situation where, as here, the fact pattern is simply that a permit was contrary to zoning was erroneously issued after a rezoning; and

WHEREAS, the Board is aware that the seminal, and most controlling case, on the good faith reliance doctrine is the Court of Appeals decision *In the Matter of Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417 (1968); and

WHEREAS, this case, in the Board’s view, involved a set facts so entirely dissimilar from those presented by the applicant that any good faith reliance claim here is untenable; and

WHEREAS, in *Jayne Estates*, the Court found that that the expenditures the developer made in reliance on the invalid permit were properly considered in the variance application because the developer acted in good faith acted and because there was no reasonable basis with which to charge *Jayne* with constructive notice (unlike the instant situation) that it was building contrary to the zoning ordinance; and

WHEREAS, further, the developer was stymied repeatedly by various municipal entities as attempts were made to proceed under the issued permit; it was not the case that the developer or owner failed to note a zoning change, as occurred here; and

WHEREAS, the Court, in supporting its decision, cited to cases it considered analogous to the situation in *Jayne Estates*, including vested rights cases where the municipal officials deliberately delayed the processing of an application and misled and hindered the applicant in order to prevent the accrual of any rights; the obvious common thread between these cases is that bad and misleading acts on the part of those responsible for issuing permits and applying zoning provisions should not prevent a landowner from receiving relief; and

WHEREAS, the actions of the governmental bodies in *Jayne Estates* were particularly egregious, including: (1) an intentional act by the Village Board of Trustees to prohibit construction when the zoning ordinance permitted the construction; (2) a grant by the Zoning Board of Appeals that contained conditions that were impossible for *Jayne* to comply with while developing the property; (3) a lengthy negotiation/settlement process with the Trustees and the Planning Board that was later found to be beyond the authority of both the Trustees and the Planning Board; and (4) approval by a reviewing court of the settlement, which upon further judicial review was determined to be improperly authorized; and

WHEREAS, in reliance on these actions of the town government and the court, the developer purchased additional land and spent money building the development; and

WHEREAS, the applicant here can only argue that the legally permissible revocation of a building permit— which was invalid when issued — is the comparable “bad act” on the part of the government that induced reliance by the owner; and

WHEREAS, however, reliance on the issuance of a building permit alone is not equivalent to the numerous assurances the developer in *Jayne Estates* received from various governmental bodies and the court; and

WHEREAS, further, the Board notes that none of the lower court cases examining the good faith reliance doctrine explicitly hold that a reliance claim can sustain a variance application without a further finding of actual uniqueness and hardship; rather, the courts maintain that zoning boards may consider financial expenditures made in good faith reliance upon a permit issuance in conjunction with other established hardship costs; and

WHEREAS, here, even assuming that good faith reliance may consist simply of actions taken after issuance of an invalid permit, the applicant has not submitted any evidence of actual hardship based on physical uniqueness (as discussed above), nor has there been any financial evidence of expenditures made following the issuance of the foundation permit; and

WHEREAS, thus, the Board rejects the applicant’s good faith reliance argument; and

WHEREAS, the final argument made by the applicant is that the two tentative tax lots actually were separate zoning lots upon DOB’s approval of the subdivision application; the applicant would then be in a position to argue that the lot area and frontage deficiencies were pre-existing conditions, and that a variance application could be predicated on that basis; and

WHEREAS, the applicant was referred to DOB for an assessment of this theory; and

WHEREAS, in a letter to the applicant dated August 18, 2006, the Queens Borough Commissioner stated that the approval of the subdivision application did not create separate zoning lots; and

WHEREAS, instead, DOB stated that “A zoning lot is formed at the time of eligibility for a lawful new building permit, alteration permit or certificate of occupancy.”; and

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WHEREAS, DOB opined that since no plan approvals for the New Building application had been obtained prior to the rezoning, no new zoning lot was created; and

WHEREAS, the Board defers to DOB's opinion without passing upon it; and

WHEREAS, in sum, the Board finds that none of the arguments made by the applicant as to the uniqueness of the site or good faith reliance have any merit; and

WHEREAS, accordingly, the Board finds that the finding set forth at Z.R. § 72-21(a) is not supported by substantial evidence or other data; and

WHEREAS, because the application fails to meet the finding set forth at Z.R. § 72-21(a), it follows that the finding set forth at Z.R. § 72-21(b) is also not met; and

WHEREAS, however, even if the applicant had established to the Board's satisfaction that the site was afflicted with actual unique physical conditions, the applicant has not submitted any evidence in support of the (b) finding other than cursory statements that developing the lot in strict conformity with the zoning resolution would not result in a reasonable return for the owners; and

WHEREAS, additionally, Z.R. § 72-21(d) provides that the practical difficulties or unnecessary hardship claimed as a ground for the variance must not have been created by the owner of the zoning lot; and

WHEREAS, the Board finds that any potential hardship faced by the owner is self-created, since the owner had constructive notice of the zoning change, and retains the ability to negotiate with the purchaser and reach an agreement that will allow either party to build a new home, or enlarge the existing home in compliance with the currently applicable zoning regulations, utilizing available floor area; and

WHEREAS, because the Board finds that the two applications fail to meet the findings set forth at Z.R. §§ 72-21(a), (b) and (d), they must be denied.

Therefore it is Resolved that the decision of the Borough Commissioner, dated July 20, 2004, acting on Department of Buildings Application No. 401599392, is sustained and the subject applications are hereby denied.

Adopted by the Board of Standards and Appeals, August 22, 2006.

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 – 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, August 22, 2006.

310-05-A & 311-05-BZ

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

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

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

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 17, 2005, acting on Application No. 402082376 reads:

“A commercial building located in C4-2 zoning district under BSA Calendar No. 232-52-A with a permitted use for a funeral parlor has expired. It has since been referred to the Board of Standards and Appeals for further action.”; and

WHEREAS, this is an application to permit the use of a frame building for commercial use; and

WHEREAS, the Board reviewed a companion case, under BSA Cal. No. 311-05-BZ, to legalize the use of the second floor for the funeral establishment, concurrently; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2006, and then to decision on August 22, 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 12, Queens, and the Queens Borough President recommend approval of this application; and

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

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conditions set forth below; and

WHEREAS, the subject site is a 21,122 sq. ft. lot located on the northeast corner of Hillside Avenue and Merrick Boulevard; and

WHEREAS, the site is improved upon with a 2 1/2-story building which operates as a lawful non-conforming funeral establishment, with a total floor area of 7,911 sq. ft.; and

WHEREAS, on July 22, 1952, under BSA Cal. No. 232-52-A, the Board granted an application to permit the use of a frame building for commercial purposes, the funeral establishment, for a term of ten years; and

WHEREAS, subsequently, the term of this grant was extended at various times until 1978; and

WHEREAS, the applicant represents that, prior to 2002, the second floor was converted from living quarters to funeral chapels and other funeral establishment facilities; and

WHEREAS, initially, the applicant proposed to legalize the use of two chapels, a lounge, a lobby, storage space, and restrooms on the second floor; and

WHEREAS, at hearing, the Board raised a number of concerns regarding fire safety with regard to the use of the second floor; and

WHEREAS, specifically, the Board requested that the applicant provide a second means of egress from the second floor; and

WHEREAS, in response, the applicant revised plans to show a new exterior staircase from the second floor; and

WHEREAS, additionally, the applicant noted that the existing windows in Viewing Chapel E provide access to the roof and provide another means of egress; and

WHEREAS, the Board also suggested that the applicant provide fireproof metal doors between the different rooms on the second floor; and

WHEREAS, the Board expressed concern about egress from the second chapel; and

WHEREAS, in response to the Board's concern about egress from the second chapel, the applicant revised plans to show that it would no longer be used for chapel space; and

WHEREAS, the applicant represents that the space initially designated for the second chapel will be dedicated to storage space; and

WHEREAS, the applicant revised plans to add self-closing fireproof doors between Viewing Chapel E and the lobby and the large storage area and the lobby on the second floor; and

WHEREAS, the applicant revised plans to incorporate the additional fire safety measures.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 17, 2005, acting on Application No. 402082376, is modified by the power vested in the Board, and that this appeal is granted to permit the building on the premises to be occupied as a commercial funeral home, as indicated on revised drawings filed with the application marked "Received July 6, 2006"-(6) sheets and "August 8, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 22, 2016;

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

THAT all signage shall comply with C4-2 zoning district regulations;

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 DOB;

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

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

THAT the Department of Buildings must ensure compliance with all of 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, August 22, 2006.

351-05-BZ

CEQR #06-BSA-041K

APPLICANT – The Law Offices of Howard Goldman/Emily Simons, Esq., for Atlas Packaging Solutions Holding Co., owner.

SUBJECT – Application December 14, 2005 – Variance ZR §72-21 to allow a proposed four (4) story residential building containing eight (8) dwelling units in an M2-1 Zoning District; contrary to Z.R. §42-00.

PREMISES AFFECTED – 146 Conover Street, south facing block of Conover Street, between King and Sullivan Streets, Block front of Conover Street, between King and Sullivan Streets. Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Emily Simons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 6, 2005, acting on Department of Buildings Application No. 302050394, reads in pertinent part:

“The proposed residential building located in an M2-1 Zoning District is contrary to the use provisions of Section 42-00 of the Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an M2-1 zoning district, a four-story

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residential development with six dwelling units, which is contrary to ZR § 42-10; 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 July 11, 2006, and then to decision on August 22, 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 6, Brooklyn, the South Brooklyn Industrial Development Corporation (“SBDC”), the Mayor’s Office of Industrial & Manufacturing Businesses (“IMB”), and the New York Industrial Retention Network (“NYIRN”) all provided testimony in opposition to the application; the arguments of these entities are discussed below; and

WHEREAS, the subject premises is a 2,500 sq. ft. lot, with a width of 25 feet and a depth of 100 feet, located on the south side of Conover Street between King and Sullivan Streets, in the Red Hook neighborhood of Brooklyn; and

WHEREAS, the site is adjacent to residential buildings on either side; one of the buildings is occupied, though the other is not and may have lost its non-conforming status; and

WHEREAS, the applicant states that the site was formerly improved upon with a four-story residential building, which existed on the site until it was demolished around 1980; the site has been vacant since then, and has never been occupied by an industrial or manufacturing use; and

WHEREAS, the applicant proposes to construct a four-story residential building, with six units, a street wall and total height of 50’-0”, a total residential floor area of 5,350 sq. ft., a total residential FAR of 2.14, and a rear yard of 45’-0”; 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’s small size does not allow for the creation of a viable conforming industrial building with floor plates sufficient for modern manufacturing uses; and (2) the site is vacant and adjacent to residential buildings; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building, because the floor plates in a conforming building would be of insufficient size and impractical layout, and therefore not suitable for a modern conforming user; and

WHEREAS, the Board notes that an inability to create a viable industrial building because of small lot size is a well-established unique physical condition that can lead to unnecessary hardship, and has been approved as such (upon submission of substantial evidence) in many other applications; and

WHEREAS, as to the adjacency to residential buildings, the Board acknowledges that this may not always be, in of itself, a basis for a claim of unnecessary hardship, but it can often contribute to a hardship claim, since the site is typically less desirable and therefore less marketable; and

WHEREAS, however, the Board asked the applicant to reinforce the uniqueness of this site; specifically, the Board was concerned that the subject lot dimensions might reflect a common condition in the surrounding area; and

WHEREAS, in response, the applicant has submitted a 400-ft. radius diagram that shows that of the seven other similarly-sized sites within the radius, all are occupied with warehouses and garage-type structures that were primarily built between 1920 and 1961, when economic conditions permitted small-scale industrial development; and

WHEREAS, further, within the radius, most of the conforming uses occupy sites much larger than the subject lot; and

WHEREAS, the applicant concludes that this diagram and related analysis supports the contention that no recent new construction of industrial buildings has occurred on such small lots in this area of Red Hook in the last 40 years; and

WHEREAS, the Board confirmed on its site and neighborhood visit that the site is one of the few similarly-sized vacant sites within the subject zoning district; and

WHEREAS, the applicant notes that there are no other vacant lots within the 400-ft. radius which have residential buildings on both sides (which, as noted above, further compromises the site’s marketability and feasibility for conforming use); and

WHEREAS, further, the radius diagram illustrates that on the subject block, the site is the only site out of the seven sites that is vacant and adjacent to residential buildings; and

WHEREAS, thus, unlike many other similarly sized sites, the subject lot would have to be developed with a new industrial building, which would have inefficient floor plates; further, any industrial user would have at least one active residential neighbor; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions, namely, the site’s small size and its location between two historically residential buildings (one of which is occupied), 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 analyzing the following as-of-right scenario: a conforming one-story manufacturing building; and

WHEREAS, the applicant concluded that such a scenario would not result in a reasonable return; and

WHEREAS, further, the applicant provided evidence to show that there are a number of vacant manufacturing buildings within the 400-ft. radius that would be more marketable than the subject lot, which would need to be cleared and developed with a building since it is vacant; and

WHEREAS, the applicant also states that the owner’s marketing attempts for conforming use – including print ads and listings with brokers - were unsuccessful; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will

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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 submitted a detailed land use survey and map, as well as a parking survey, prepared by a consultant; and

WHEREAS, the map covers an approximately ten block area around the subject site, and includes both manufacturing and residential zoning districts; and

WHEREAS, the map illustrates that of the 165 lots in the study area, 34 (21 percent) are vacant, 34 (21 percent) are occupied by warehouse, storage, or commercial uses, 16 (ten percent) are occupied by parking/garage uses, five (less than one percent) are occupied by community facilities, and 76 (46 percent) are occupied by residential uses; and

WHEREAS, the map further illustrates that the site is one-half block from a major community facility that, in part, provides housing for individuals with special needs and contains 36 rooming units; and

WHEREAS, the Board also observes that the subject block-front contains two occupied residential buildings; the lot directly adjacent to the subject site (Block 554, Lot 28) contains eight dwelling units and the lot at the northwest corner of Conover and Sullivan streets (Block 554, Lot 34) contains a residential building with three dwelling units; and

WHEREAS, there is also an R5 zoning district across Conover Street and Sullivan Street beginning at the adjacent block; and

WHEREAS, the applicant concludes, and the Board agrees, that the area is best characterized as mixed-use, given both the proximity of residential units and the fact that 46 percent of the lots in the study area are in residential use; and

WHEREAS, additionally, based upon a utilization survey of on-street parking, the consultant concludes that there is available parking in the neighborhood sufficient to accommodate the parking needs generated by the proposed residential development; and

WHEREAS, the study also reflected that curb cuts into sites occupied by conforming uses are sufficiently sized that vehicles entering and exiting such sites would not be impacted by the additional personal auto parking generated by the proposed development; and

WHEREAS, based upon the above, the Board finds that the introduction of six dwelling units (which reflects a reduction from the initially proposed eight) on this street will not impact nearby conforming uses nor change the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that the proposed building's roof line will match the height of the two adjacent residential buildings; and

WHEREAS, the Board observes that both adjacent buildings are four stories and that most of the residential buildings in the area have similar heights; and

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

WHEREAS, the Board notes that the case is predicated on the small size of the lot and its adjacency to buildings with active or historical residential use, and the inability to develop the site in way that would be both viable and useful to a modern conforming user; and

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

WHEREAS, as to minimum variance, the Board notes that the applicant was directed to review smaller scale buildings than that proposed; specifically, the applicant conducted an analysis of a building comparable to what could be constructed in an R5 zoning district, as well as an R6 height-factor building; and

WHEREAS, the applicant responded that these scenarios resulted in buildings that either were not feasible or were not in character with the neighborhood (the majority of residential buildings are streetwall buildings); and

WHEREAS, however, as noted above, the applicant reduced the unit count to six, as opposed to the originally proposed eight, and matched up the building height with the two adjacent buildings; and

WHEREAS, finally, the Board also directed the applicant to eliminate the cellar from the proposal, in order to avoid costs associated with foundation removal; and

WHEREAS, in conclusion, because the applicant only proposes a use change that will facilitate the construction of a modest residential building comparable in bulk and height to the adjacent and other area buildings, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, as mentioned above, the Community Board, SBIDC, IMB and NYIRN opposed this application; and

WHEREAS, the Community Board alleges that the site is not unique, that conforming manufacturing use is viable, that residential use would negatively impact nearby conforming uses, and that any hardship was self-created; and

WHEREAS, SBIDC opposed the application both on the required findings, the broad policy considerations stated by IMB (discussed below), as well as on the basis that the marketing attempts were not valid; and

WHEREAS, in particular, SBIDC states that the owner did not utilize its resources for finding a conforming user, and that its calls made in response to the print ad were not returned; and

WHEREAS, however, the owner of the site contests this and states that SBIDC did not refer any potential industrial users to him; and

WHEREAS, further, the Board notes that while marketing is often a supporting element of a case, it is not a required one,

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especially since the feasibility study referenced above conclusively establishes that the site is not capable of sustaining viable conforming development due to its unique physical conditions; and

WHEREAS, IMB, in its initial submission, opposed the application on the basis that the site is located within the City-designated Southwest Brooklyn Industrial Business Zone and the State's Southwest Brooklyn Empire Zone, and that if the site were used for residential purposes, the Red Hook neighborhood would lose additional industrial space, compounding the cumulative loss of space over the last decade; and

WHEREAS, IMB also stated that manufacturing users have general concerns about not being able to compete with commercial and residential uses, and that there is no reason why the site could not be developed for industrial activity; and

WHEREAS, in a second submission, dated August 21, 2006, IMB expanded upon these concerns; and

WHEREAS, in its August 21 submission, IMB makes the following arguments: (1) the variance if granted would alter the essential character of the neighborhood; (2) the site is not uniquely different from other sites in the Red Hook neighborhood, and is not too small to be developed with a viable industrial building; (3) any hardship is self-created; and (4) the variance is not the minimum variance, since the Board could grant additional floor area in order to allow for a more viable development; and

WHEREAS, as to the character argument, IMB again cites to the policy considerations inherent to the creation of the IBZs; and

WHEREAS, the Board is aware of these policy considerations and recognizes that the boundaries of the subject IBZ were carefully considered based upon significant research and analysis; and

WHEREAS, the Board also understands the mission of IMB; and

WHEREAS, however, the Board's review of variance applications is site-specific, and its analysis of the character finding is based upon a variety of factors that may not correspond to the broader economic concerns inherent to the IBZs; and

WHEREAS, in this case, the record contains no evidence of business displacement or elimination of jobs, and no property with a history of viable industrial use is irretrievably lost; and

WHEREAS, the Board also notes that the subject lot, at 2,500 sq. ft, represents 0.003 percent of the total property area within the subject IBZ (64,686,600 sq. ft, or 1,485 acres); and

WHEREAS, moreover, the Board is unable to find any support for the position that the conversion of a 2,500 sq. ft. site that historically has *only* been occupied by residential use, which is between two historically residential buildings, and which is within a broader area where only 32 percent of the developed lots are occupied by conforming uses, is sufficiently contrary to any public policy such that the requested use variance should not be granted; and

WHEREAS, in sum, where, as here, an applicant for a variance has met the required findings, unsupported assertions

concerning the impact that a proposal might have on general economic policies cannot overcome the Board's responsibility under the law to grant the indicated relief; and

WHEREAS, IMB also states that encroaching residential development within the IBZ would exacerbate potential conflicts between residential and industrial uses; and

WHEREAS, the Board disagrees that the proposed residential development of this site will change the essential character of the community, which is a mix of both residential and conforming uses; and

WHEREAS, this was established by the expanded land use study submitted by the applicant, as well as the Board's own site visit; and

WHEREAS, additionally, the Board carefully considered the potential impact that the proposed residential building would have on conforming uses in the area, and determined that there would not be any adverse impacts; and

WHEREAS, as to the uniqueness argument, IMB cites to two separate exhibits in support of the contention that the site can sustain viable industrial development; and

WHEREAS, the first of the exhibits is a purported list of 16 industrial businesses within the Red Hook neighborhood on lots of comparable size; the source of the data is NYIRN; and

WHEREAS, in response, the applicant notes that based on its review of New York Property Research database records and Sanborn tax maps, it appears that three of these 16 sites are larger than the subject site (63 Commerce Street – 20,000 sq. ft.; 160 Conover Street – 12,500 sq. ft.; and 115 Wolcott Street – 4,000 sq. ft.); and

WHEREAS, the applicant also notes that its review of the Real Estate Board of New York database indicates that six of the 16 were developed with industrial buildings in the 1930s; and

WHEREAS, further, the applicant states that its review of DOB's Building Information System ("BIS") records revealed that three of the 16 are used for garage purposes rather than traditional industrial purposes; and

WHEREAS, the Board has reviewed the supporting documentation and agrees with the applicant's observations; and

WHEREAS, additionally, the Board observes that the presence of long-standing businesses on comparably-sized lots does not necessarily mean that an historically vacant lot can be feasibly developed; and

WHEREAS, finally, the Board observes that to meet the finding set forth at ZR § 72-21(a), a site does not have to be the only site in the vicinity that suffers from a particular hardship; and

WHEREAS, instead, the Board must find that the hardship condition cannot be so prevalent that if variances granted to every identically situated lot, the character of the neighborhood would significantly change (see *Douglaston Civic Ass'n, Inc. v. Klein*, 435 N.Y.S.2d 705 (1980)); and

WHEREAS, thus, merely citing to other lots in the area that appear to be similar without further analysis is insufficient; and

WHEREAS, here, the applicant has conclusively established that the subject site is one of the very few in the area

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that is vacant, adjacent to an occupied residential building, and 2,500 sq. ft. in size; and

WHEREAS, IMB's second exhibit is a purported list of 14 new industrial buildings constructed in the last 6 years on comparably-sized lots within Brooklyn; the source data was again provided by NYIRN; and

WHEREAS, the applicant responds that, based upon its review of BIS and Sanborn maps, 10 of the 14 lots are actually part of larger merged lots, ranging in size from 4,000 to 11,000 sq. ft.; and

WHEREAS, BIS reveals that two of the lots (279 Starr Street and 267 44th Street) are comparably-sized, and appear to be in the process of being developed, but no certificates of occupancy have yet been issued; and

WHEREAS, BIS also reveals that one of the lots (188 Alabama Avenue) does not appear to be in the process of any development, as no job applications have been filed and no permits have been issued; and

WHEREAS, the applicant argues that only one of the 14 sites is 2,500 sq. ft. and has been recently developed, with issuance of a certificate of occupancy; the CO indicates that the site was developed for vehicle storage, not with a typical industrial use; and

WHEREAS, as with the prior list, the Board has reviewed the supporting documentation and agrees with the applicant's observations; and

WHEREAS, however, even assuming that every one of the 14 lots on the second list were single, 2,500 sq. ft. lots that had been developed in the last five years with lawful industrial buildings and with issuance of certificates of occupancy, the Board would not consider this relevant; and

WHEREAS, none of the lots are in the subject neighborhood, and there is no evidence that they suffer the additional hardship of adjacency to a residential building; and

WHEREAS, further, the Board finds it difficult to characterize 14 developments on small lots within the entire borough of Brooklyn in the past five years a significant amount, and the Board respectfully disagrees with IMB's assertion that this reflects a "sufficient, if not healthy, demand for smaller industrial spaces with a footprint similar to the property"; in fact, it suggests the opposite; and

WHEREAS, additionally, the Board does not find it relevant that a site *could* be developed with an industrial building, should an owner decide that it might be convenient to do so for business reasons notwithstanding the viability of such a building on the general market; and

WHEREAS, the important consideration is whether a site that suffers unique physical conditions can be developed for a conforming use and still provide the owner a reasonable return based upon dollar and cents proof as reflected in a feasibility study; and

WHEREAS, here, IMB has not offered any argument as to why the Board should not credit the expert feasibility analysis undertaken on behalf of the property owner, which concluded that a reasonable rate of return could not be achieved from development of an industrial building on the site; and

WHEREAS, as noted above, the Board reviewed the feasibility analysis, and found that it is based upon proper methodology and that the assumptions presented in it are reasonable; and

WHEREAS, based upon the above, the Board disagrees with IMB's assertion that the site does not suffer a unique hardship; and

WHEREAS, as to the contention that any hardship on the site is self-created, IMB states that the loss of the prior lawful non-conforming status as a residential lot is the equivalent of a self-created hardship; and

WHEREAS, in response, the applicant states the hardship on which the case is predicated is not the loss of its non-conforming status, but rather its small size, and location between two residential buildings; and

WHEREAS, the Board notes that these hardships would exist even if the site had always been zoned exclusively for manufacturing; the loss of the former non-conforming status of the site is irrelevant to any hardship claim; and

WHEREAS, as part of its self-created hardship argument, IMB also cites to the alleged deficiencies in the marketing of the site; and

WHEREAS, specifically, IMB notes that while print ads and broker listings were pursued, no signage was ever placed on the site indicating that it was available for industrial development; and

WHEREAS, while the relevance of marketing has been addressed above, the Board firsts notes that any deficiencies in marketing, even if proven, would not be properly characterized as a self-created hardship; rather, this would potentially pertain to the reasonable return finding; and

WHEREAS, further, the Board considers the print ads and the broker listings more than a sufficient substitute for signage; and

WHEREAS, finally, IMB contends that the owner failed to protest the inclusion of this property within the subject IBZ when the boundaries were being formalized; and

WHEREAS, the Board does not consider this relevant; and

WHEREAS, as to the final argument – that the proposed use change is not the minimum variance – IMB alleges that an FAR waiver for a larger than permitted industrial/commercial structure would achieve leasing rates of a minimum of \$12 per square foot, which would generate "additional revenue to the property owner"; and

WHEREAS, the Board agrees that such a scenario was not requested of the applicant, but notes that IMB's assertion of a particular per square foot leasing rate is pure speculation, since IMB did not provide any documentation whatsoever to support this theory; and

WHEREAS, in particular, IMB does not direct the Board's attention to any examples of a over-built manufacturing building on a 2,500 sq. ft. site in the area that illustrates the proposition that additional floor area adds intrinsic value to the site sufficient to overcome very small lot size and adjacency to residential uses; and

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WHEREAS, NYIRN argues that residential development is incompatible with the industrial businesses in the area, including three solid waste transfer stations that are within two blocks of the site; and

WHEREAS, NYIRN further argues that there is heavy truck traffic on the streets during the day, picking up garbage and making deliveries; and

WHEREAS, however, the Board concludes that the introduction of six units on Conover Street, in the subject mixed-use neighborhood, will not have a significant effect on vehicle circulation or conforming uses; and

WHEREAS, NYIRN also contests the per square foot assumption made by the applicant in its feasibility study, and suggests that a higher value should be used; and

WHEREAS, NYIRN further suggests that the upper floor of a conforming building could be used for office or artisan space, and that the minimum variance would be an additional floor of such uses; and

WHEREAS, the Board notes, however, that NYIRN, like IMB, did not provide any evidence in support of these contentions; instead, they are speculative; and

WHEREAS, the Board also notes that NYIRN makes similar assertions as IMB as to uniqueness and the effect of the IBZ, with which, for reasons stated above, the Board does not concur; and

WHEREAS, in conclusion, the Board finds that none of the opposition arguments have any merit, and that the applicant has established with substantial evidence that the requested variance should be granted; 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. 06BSA041K, dated December 14, 2005; and

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) an April, 2006 Environmental Assessment Statement; (2) a July, 2005 Phase II Workplan; (3) a July, 2005 Health and Safety Plan; and (4) a March 17, 2006 "noise attenuation commitment letter"; and

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

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on March 20, 2006 for subsequent recordation; 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 lot within an M2-1 zoning district, a four-story residential development with six dwelling units, which is contrary to ZR § 42-10, *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 August 18, 2006"-eight (8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: four stories; six dwelling units; a residential and total FAR of 2.14; a street wall and total height of 50'-0"; a 45'-0" rear yard; and lot coverage of 55 percent;

THAT the all dwelling units shall provide double glazed windows with good sealing properties, and an alternate means of ventilation (central air conditioning or air conditioning sleeves), to provide 35-dBA noise attenuation in order to ensure an acceptable interior noise environment of 45-dBA;

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, August 22, 2006.

32-06-BZ

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

SUBJECT – Application February 28, 2006 – Special permits pursuant to Z.R. §§ 73-482 and 73-49 to allow an accessory group parking facility in excess of 150 spaces and to allow roof-top parking. Zoning variance pursuant to Z.R. Section 72-21 is also proposed to allow proposed parking facility to violate applicable height and setback requirements of Z.R. Section 33-431. Premises is located within an R6/C2-3 zoning district.

PREMISES AFFECTED – 5935 Broadway, east side of

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Broadway between 242nd Street and Manhattan College Parkway, Block 5776, Lot 632, Borough of The Bronx.

COMMUNITY BOARD #8BX

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, the decision of the Bronx Borough Commissioner, dated February 21, 2006, acting on Department of Buildings Application No. 200905075, reads, in pertinent part:

- “1. Proposed accessory parking garage in excess of 150 spaces with rooftop parking requires Special Permit from the BSA pursuant to ZR §§ 73-482 and 73-49.
2. Proposed height and setback for garage building is contrary to ZR § 33-431.”; and

WHEREAS, this is an application under ZR §§ 72-21, 73-482, and 73-49 to permit an accessory parking facility to an existing community facility in excess of 150 spaces and to allow roof-top parking, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-431; and

WHEREAS, the application is brought on behalf of the Manhattan College (the “College”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application with certain conditions discussed below; and

WHEREAS, certain neighbors provided testimony in opposition to the proposed facility, citing concerns about pollution, access to light and air, and security; and

WHEREAS, the site 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, the site is located on the east side of Broadway between 242nd Street and Manhattan College Parkway; and

WHEREAS, the subject zoning lot is within an R6/C2-3 zoning district as rezoned on July 19, 2006; and

WHEREAS, the subject site is an 84,694 sq. ft. zoning lot, improved upon with a 225-space accessory parking lot for the College, and a one-story 11,350 sq. ft. maintenance and storage building; and

WHEREAS, the applicant proposes to replace the existing parking lot and building with a 365,000 sq. ft. structure with the following uses: (1) 715 parking spaces accessory to the College

campus across Manhattan College Parkway; (2) an as-of-right 55,000 sq. ft. supermarket with accessory parking of approximately 186 cars; and (3) a pedestrian bridge connection of the proposed accessory parking lot to the College’s campus; and

WHEREAS, the applicant states that a substantial change in grade between Manhattan College Parkway and Broadway enables a logical separation of the supermarket use and the College accessory parking use; the supermarket will be on the first and second floors and front on Broadway and the College parking facility will begin at the third floor and front on Manhattan College Parkway; and

WHEREAS, as to the mix of not-for-profit and for-profit elements of the proposed building, the applicant states that the first level, occupied by the supermarket, and the accessory parking immediately above it, will form a separate tax lot and condominium unit of the building; the condominium unit will be owned by the College and leased to the supermarket under a long-term lease; and

WHEREAS, the remainder of the parking structure, consisting of five College accessory parking levels, including the roof, will constitute a second tax lot and condominium unit owned and used by the College; and

WHEREAS, the applicant represents that it has structured the development of and income produced by the site so as not to exceed the thresholds permitted in order to maintain not-for-profit status; and

WHEREAS, the applicant states that the following are the programmatic space needs of the College, which have led to the development proposal and which necessitate the requested special permits and waivers: (1) a need to consolidate and centralize all accessory parking, and eliminate the multiple sites currently occupied by smaller and less efficient parking lots so that they can be redeveloped with academic facilities; and (2) a need to satisfy student and faculty parking needs while alleviating the parking burden on neighborhood streets; and

WHEREAS, in order to meet these needs, the applicant seeks the following: (1) a special permit pursuant to ZR § 73-482, to permit an accessory group parking facility of 715 spaces for College use (another 186 spaces will be accessory to the supermarket); (2) a special permit pursuant to ZR § 73-49, to permit roof parking in order to accommodate the requisite number of spaces with the allowable FAR on the site; and (3) a variance pursuant to ZR § 72-21 for height and setback, to allow the floorplates of the garage to most efficiently accommodate the needed parking; and

WHEREAS, pursuant to ZR § 73-482, the Board may permit accessory group parking facilities in excess of 150 spaces in commercial or manufacturing districts, provided the following findings are made: (1) that there is adequate reservoir space to accommodate the vehicular entrance of either ten automobiles or five percent to of the total parking spaces provided, whichever is greater; and (2) the streets providing access to such use are adequate to accommodate the traffic generated; and

WHEREAS, the applicant represents that the proposed 901-parking space facility will provide 46 reservoir spaces – 28

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spaces on the entrance/exit ramp from Broadway and 18 spaces on the entrance/exit ramp from Manhattan College Parkway; and

WHEREAS, the Board notes that 46 reservoir spaces is five percent of the total number of spaces to be provided, which satisfies the requirement; and

WHEREAS, the applicant represents the streets providing access to the proposed accessory garage are adequate to handle traffic generated by the garage; and

WHEREAS, specifically, the applicant asserts that Broadway and Manhattan College Parkway are major streets and that the traffic projections of the Van Cortlandt College EAS (CEQR No. 06DCP033X), submitted into the record, indicate that no significant adverse impacts to traffic and parking will occur due to the proposed project; and

WHEREAS, further, Broadway in the vicinity of the site is a two-way north-south boulevard with a mall and a width of approximately 100 feet with two travel lanes and parking in the northbound direction and three main travel lanes with a 32-foot wide service lane and parking in the southbound direction; and

WHEREAS, Manhattan College Parkway is a two-way street that extends from Broadway to the Henry Hudson Parkway and provides access to Manhattan College facilities; it has an average roadway width of 30 feet with one travel lane in each direction; and

WHEREAS, the applicant represents that the proposed garage will have two points of access, including a new signalized entrance and exit on Broadway between West 240th and West 242nd Streets and an unsignalized entrance and exit on Manhattan College Parkway; and

WHEREAS, upon reviewing the traffic study and site access plan, the Board agrees that the street network can accommodate the incremental traffic generated by the proposed garage; and

WHEREAS, based upon the above, the Board concludes that the findings required under § 73-482 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit accessory off-site parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the proposed garage is designed and located so as not to impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, specifically, the applicant represents that the 44,246 sq. ft., 112-space roof parking level above the sixth floor is not visible from the street level on either Broadway or Manhattan College Parkway; and

WHEREAS, further, the ramps to the roof level will be located in the College of the garage away from its perimeter; and

WHEREAS, the applicant represents that all parking levels for the garage, including the roof level, are located as far east as possible on the Broadway side of the zoning lot so as to maximize the distance from residential buildings above the garage to the west; and

WHEREAS, at hearing the Board asked the applicant about the hours of operation for the roof parking; and

WHEREAS, the applicant responded that the hours of access to the roof would be limited to 7:00 a.m. to 10:00 p.m., daily, and until 11:30 p.m. during special events at the college approximately ten times a year, and that no access would be granted past those hours; and

WHEREAS, additionally, the Board asked the applicant about the lighting plan for the roof parking; and

WHEREAS, the applicant responded that minimal lighting for safety purposes would be on through the night, but that such lighting would be directed down and that there would be a 3'-6" parapet to screen the adjacent residential building; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; and

WHEREAS, the applicant states that the variance request under ZR § 72-21 is necessitated in part by the programmatic needs of the College and in part by the irregular grade change at the site; and

WHEREAS, as to programmatic needs, the applicant again notes that the proposed structure is necessary because the College seeks to alleviate current space constraints and make more efficient use of space campus-wide in order to promote academic programming; and

WHEREAS, more importantly, the applicant states that the site suffers from a steep slope condition, which creates an unnecessary hardship in developing the structure with the amount of parking allowable through the special permits in compliance with applicable height and setback regulations; and

WHEREAS, specifically, the applicant represents that there is a 31'-6" change in grade from the Broadway frontage to the Manhattan College Parkway frontage; and

WHEREAS, the applicant represents that, as a result of the slope, the proposed facility is less than 59 feet above mean-average curb level on Manhattan College Parkway, but the streetwall and total height are 76'-10" above mean-average curb level on the Broadway frontage; and

WHEREAS, in the R6/C2-3 zoning district, the maximum permitted street wall height is 60 feet or four stories, whichever is less, with an initial setback of 15 feet; and

WHEREAS, the applicant represents the height and setback waivers are necessary to create efficient floorplates for the parking facility based on layout and construction methods considerations; and

WHEREAS, specifically, the applicant represents that a complying building, with the setback, would not allow for the all of the necessary parking spaces; and

WHEREAS, the Board notes that a setback would create inefficient floorplates and require an additional floor of parking in order to recapture the lost floor area and parking spaces; and

WHEREAS, accordingly, based upon the above, the Board finds that the slope condition affecting the site, when considered in conjunction with the programmatic needs of the College, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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WHEREAS, since the College is a non-profit educational institution and the variance is 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 variance, 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, specifically, the applicant represents that adjacent residential properties that face the zoning lot, will not be able to view any non-complying conditions; and

WHEREAS, further, the applicant represents that the portion of the facility that requires the height and setback waiver is along the Broadway frontage, which has an elevated train station facing the building; and

WHEREAS, the Board notes that the proposed project would help relieve the impact the College's insufficient parking has on the surrounding neighborhood streets; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the College could occur on the existing lot given its unique topographical conditions; and

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

WHEREAS, the applicant represents that the requested height and setback waiver is the minimum waiver necessary to accommodate the current and projected needs while alleviating the parking problems and freeing up campus space for educational facilities; and

WHEREAS, the applicant performed an analysis that demonstrated that, due to the lot's slope, the garage would have to be altered substantially, and the parking reduced considerably, without the requested waiver; and

WHEREAS, the Board notes that the applicant will locate height and setback encroachment on Broadway away from the residential buildings so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the College to fulfill its programmatic needs; and

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

WHEREAS, the City Planning Commission (CPC), as Lead Agency, has conducted an environmental review (CEQR No. 06DCP033X) for the subject actions before the BSA; and of related actions approved by the CPC. The CPC related actions are as follows:

- o An amendment to the Zoning Map to change an

M1-1 district and an R6 district to an R6/C2-3 district;

- o A revocable consent, from the New York City Department of Transportation (DOT), to construct a pedestrian bridge over Manhattan College Parkway, connecting the proposed development to the Manhattan College Campus.

WHEREAS, the CPC issued a Negative Declaration for CEQR No. 06DCP033X, on March 6, 2006;

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 application under ZR §§ 72-21, 73-482, and 73- to permit an accessory parking facility to an existing community facility in excess of 150 spaces and to allow roof-top parking, in a structure which does not comply with the zoning requirements for height and setback, contrary to ZR § 33-431, *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 August 16, 2006"- fifteen (15) sheets; and *on further condition*:

THAT the total building floor area of the new building shall not exceed 365,000 sq. ft., as illustrated on the BSA-approved plans;

THAT the total number of parking spaces shall not exceed 715 in the parking lot accessory to the College and 186 in the parking lot accessory to the supermarket;

THAT the hours of operation of the roof level shall be from 7:00 a.m. to 10:00 p.m., daily, and until 11:30 p.m. during special events approximately ten times a year;

THAT a total of 46 reservoir spaces shall be provided at the entrances of the parking garage;

THAT all lighting on the roof shall be directed down and away from adjacent residential use;

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, August 22, 2006.

40-06-BZ
CEQR #06-BSA-062M

APPLICANT – The Law Office of Fredrick A. Becker, for Ten Hanover LLC c/o The Witkoff Group, owner; Plus One

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Holding Incorporated, lessee.

SUBJECT – Application March 8, 2006 – Special Permit pursuant to Z.R. §73-36 to allow the operation of a Physical Culture Establishment (PCE) on the cellar and sub-cellar levels in a 21-story mixed-use building. The PCE membership will be limited to employees of Goldman Sachs and residents of the subject premises in a space formerly occupied and used as an accessory PCE (1998 to 2004) for members of Goldman Sachs. The premises is located in a C5-5 (LM) zoning district. The proposal requests a waiver of Z.R. Section 32-00 (Use Regulations).

PREMISES AFFECTED – 10 Hanover Square, easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

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 Manhattan Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 103940906, reads, in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in (C5-5) zoning district and it is contrary to ZR (ZR 32-10).”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-5 zoning district in the Special Lower Manhattan District (LM), the conversion of an accessory exercise facility located on the first floor, cellar and sub-cellar levels of an existing 21-story mixed-use building to a physical culture establishment (PCE), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in *The City Record*, and then to decision on August 22, 2006; and

WHEREAS, Community Board 1, 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 east side of Hanover Square, between Water Street and Pearl Street; and

WHEREAS, the PCE operated from 1998 to 2004 as an accessory facility to the commercial building then occupied by Goldman Sachs; and

WHEREAS, the special permit is required because the building has since been converted to residential use and the current proposal is for the private facility to be used by

building residents and Goldman Sachs employees who now work in other buildings; and

WHEREAS, the PCE occupies a total of 28,041 sq. ft. of floor area, with 1,229 sq. ft. on the first floor, 8,972 sq. ft. in the cellar level, and 17,840 sq. ft. in the sub-cellar; and

WHEREAS, the applicant represents that massages are offered at the PCE and that there are fitness and exercise facilities; and

WHEREAS, the PCE has the following hours of operation: Monday through Thursday, 5:30 a.m. to 10:30 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, as to sound attenuation, the applicant represents that there have not been any noise complaints; and

WHEREAS, further, the applicant notes that the first floor is occupied by the lobby and commercial uses and provides a buffer between the PCE on the lower levels and the residential use on the upper floors; 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 conversion of the facility to a 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. 06BSA062M, dated June 1, 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 continued

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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 C5-5 (LM) zoning district, the conversion of an accessory exercise facility located on the first floor, cellar and sub-cellar levels of an existing 21-story mixed-use building to a PCE, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 23, 2006”-(3) sheets and “Received March 8, 2006”-(2) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on August 22, 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, 5:30 a.m. to 10:30 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

THAT all massages shall be performed only by New York State licensed massage professionals;

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, August 22, 2006.

66-06-BZ

APPLICANT – Slater & Beckerman, LLP, for Vaughn College of Aeronautics and Technology, owner.

SUBJECT – Application April 13, 2006 – Zoning variance pursuant Z.R. § 72-21 – Application is filed by the Vaughn College of Aeronautics and Technology and seeks a variance to permit the construction of a new three story college dormitory that does not conform to the use regulations of the

M1-1 zoning district.

PREMISES AFFECTED – 22-40 90th Street, east side of 90th Street the corner formed by the intersection of 23rd Avenue, Block 1064, Lot 100, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Carole Slater.

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 April 7, 2006, acting on Department of Buildings Application No. 402309809, reads, in pertinent part:

“Proposed Use Group 3A College Dormitory in M1-1 zoning district is contrary to ZR 42-10 of Zoning Resolution.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story college dormitory, which is contrary to ZR § 42-10; and

WHEREAS, the application is brought on behalf of Vaughn College of Aeronautics and Technology (the “College”), a nonprofit college; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to decision on August 22, 2006; and

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, City Council Member Hiram Monserrate provided testimony in support of the application; and

WHEREAS, the site 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, the site is located on the east side of 90th Street, between 23rd Avenue and Ditmars Boulevard; and

WHEREAS, the subject site is a 123,720 sq. ft. (2.8 acres) zoning lot improved upon with a 2,625 sq. ft. one-story building occupied by an engine observation building at the rear of the site as well as a parking lot that accommodates approximately 150 cars; and

WHEREAS, the building and the parking lot will remain; and

WHEREAS, the subject site and the adjacent Lot 2 comprise the College campus which has a total lot area of approximately seven acres; and

WHEREAS, the main academic and administrative building, along with certain accessory uses, is located on Lot 2; and

WHEREAS, the applicant proposes to construct a three-

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story, 200-bed residence hall (UG 3) for its students, with a floor area of 46,435 sq. ft.; and

WHEREAS, the development of the dormitory complies with regulations applicable to community facilities in the adjacent R3-2 zoning district, except for the building height and the width of one of the two required side yards; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the College, which offers degrees in management, engineering, technology, and aviation studies in addition to an air traffic control program for the Federal Aviation Administration; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the College, which necessitate the requested waivers: (1) a significant increase in attendance over the past 74 years; (2) the development of the academic program; (3) a need to draw students from outside the immediate area; and (4) a need to remain competitive by providing affordable student housing with easy access to campus facilities; and

WHEREAS, as to attendance, the applicant states that the College now serves 800 students in its non-aircraft maintenance based academic programs, an increase from 50 in 1996; and

WHEREAS, the applicant submitted evidence that the academic programming has continually evolved in step with advances in aviation and engineering throughout its history, while also developing its non-aviation based programs; and

WHEREAS, specifically, the applicant asserts that during the past ten years, the College has evolved from a trade school with a focus on aviation maintenance into an institution offering engineering, management, aviation, and other academic programming to students in pursuit of Associate and Bachelor of Science degrees; and

WHEREAS, further, the College is one of only 13 schools in the country to offer such programming including an air traffic control program for the Federal Aviation Administration; and

WHEREAS, the applicant represents that, due to its unique program, it can now attract students from beyond the immediate area; and

WHEREAS, the applicant represents that a large number of its students are from Queens and Brooklyn because it is difficult to recruit students from outside the area without being able to offer student housing; and

WHEREAS, the applicant further represents that there are no available sites near the campus where a dormitory would be permitted; and

WHEREAS, finally, the applicant notes that the large open space on the 2.8 acre lot provides amply space for the proposed facility while allowing students to live on campus and close to the airport; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the construction of a dormitory in close proximity to its existing campus is necessary to address the College's needs, given the current limitations; and

WHEREAS, further, the Board notes that the site is

integrated with and relates to the existing College buildings in a way that makes it an efficient and appropriate location for the dormitory, in terms of proximity; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the College, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the College is a non-profit educational institution and the variance is 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 variance, 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, specifically, the applicant represents that adjacent sites are developed with low to medium density institutional and commercial buildings, including two- and three-story College buildings, a six-story hotel, a two-story church, and a parking lot for a rental car facility; and

WHEREAS, the Board agrees that the proposed three-story building is compatible with the surrounding neighborhood in terms of bulk; and

WHEREAS, the Board also notes that the non-complying side yard is an existing condition resulting from the location of the engine observation building on the site; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the College could occur due to the lack of suitable available as of right sites in proximity to the campus; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the College; and

WHEREAS, the Board notes that, although the applicant will maintain one four ft. side yard, which is non-complying under the adjacent R3-2 zoning district regulations, a 15 ft. front yard and a 104 ft. side yard will be provided; and

WHEREAS, additionally, the Board notes that the proposed building will have an FAR of 0.396, while an FAR of 1.0 is permitted in both the underlying M1-1 zoning district and the adjacent R3-2 zoning district; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the College

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to fulfill its programmatic needs; 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. 06BSA074Q, dated April 13, 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: an April, 2006 Environmental Assessment Statement and April, 2006 Phase I, Phase II and Phase III Environmental Site Assessment Reports; and

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

WHEREAS, a Restrictive Declaration was executed on August 7, 2006 and submitted to be recorded on August 16, 2006 for the subject property to address hazardous materials concerns; and

WHEREAS, the Board notes that there are certain requirements as to noise attenuation which must be met; and these mitigation measures are described in detail on an approved plan sheet "Proposed Site Plan - Drawing L-100" dated August 18, 2006; 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 application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story college dormitory, which is contrary to ZR § 42-10, *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 13, 2006"- seven (6) sheets and "Received August 18, 2006" – one (1) sheet; and *on further condition*:

THAT the total building floor area of the new building shall not exceed 46,435 sq. ft. (0.396 FAR), 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, August 22, 2006.

290-02-BZ thru 314-02-BZ

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

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

374-03-BZ thru 376-03-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner.

SUBJECT – Application December 2, 2003 – Under Z.R.

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

PREMISES AFFECTED – 114-17/19/36-A Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for continued hearing.

194-04-BZ thru 199-04-BZ

APPLICANT – Augusta & 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, Senator Samson, Francisco Marig and Markie Sampson.

For Opposition: Robinson Hernandez.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

47-05-BZ

APPLICANT – Cozin O'Connor, LLP, for AMF Machine, owner.

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

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

COMMUNITY BOARD #4Q

APPEARANCES – None.

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

204-05-BZ

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

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

COMMUNITY BOARD #15BK

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 September 12, 2006, at 1:30 P.M., for decision, hearing closed.

288-05-BZ

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

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

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

MINUTES

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Harold Weinberg, Philip Musacchio, Finy Sarila and other.

For Opposition: Adriano Santini, Violet Santini and Thomas A. Delorazzo.

ACTION OF THE BOARD – Laid over to September 26, 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, Robert Pauls and Howard Chin.

For Opposition: Stuart Beckerman.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

336-05-BZ

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

SUBJECT – Application November 23, 2005 – Special permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein and Doris Diether, Community Board #2.

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 September 12, 2006, at 1:30 P.M., for decision, hearing closed.

56-06-BZ

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for continued hearing.

72-06-BZ

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

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

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

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

94-06-BZ

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell' Angelo.

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 19, 2006, at 1:30 P.M., for decision, hearing closed.

113-06-BZ

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

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

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

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary Tarnoff, Will Paxton and Walter Sorbb.

For Opposition: Carolyn Kent.

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.

Jeff Mulligan, Executive Director

Adjourned: P.M.