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DIRECTORY

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253-06-BZ
2243 Homecrest Avenue, East side of Homecrest Avenue between Avenue V and Gravesend Neck Road., Block 7373, Lot 70, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT)-73-622-To allow the enlargement of a residence.

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 31, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 31, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

69-95-BZ
APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Hudson River Park Trust, owner; Chelsea Piers Management Inc., lessee.
SUBJECT –Application August 31, 2006 - Extension of Term/Amendment/Waiver - Application filed on behalf of the Sports Center at Chelsea Piers to Extend the term of the Special Permit which was granted pursuant to section 73-36 of the zoning resolution to allow the operation of a Physical Cultural Establishment in a M2-3 zoning district and expired on August 8, 2005. The application seeks to amend the resolution to reflect the elimination of the Health Club in the North head house of the Chelsea Piers Sport and Entertainment Complex.
PREMISES AFFECTED – Pier 60, 111B Eleventh Avenue, west side of West Street, between West 19th and West 20th Streets, Block 662, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #4M

363-04-BZ
APPLICANT – Mark A. Levine, Esq., for 6002 Fort Hamilton Parkway Partners, owners.
SUBJECT – Application June 27, 2006 – Amendment to reconfigure internal layout and minor changes to the structural façade. The premise is located in an M1-1 zoning district.
PREMISES AFFECTED – 6002 Fort Hamilton Parkway, a/k/a 949-959 61st Street, a/k/a 940-966 60th Street, south of 61st Street, east of Fort Hamilton Parkway, Block 5715, Lots 21 & 27, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

84-06-BZY
APPLICANT – Eric Palatnik, P.C., for Debra Wexelman,owner.
SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR 11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.
PREMISES AFFECTED –1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #14BK

OCTOBER 31, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 31, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

67-06-BZ
APPLICANT – Joseph P. Morsellino, Esq., for Jhong Ulk Kim, owner; Walgreens, lessee.
SUBJECT – Application April 14, 2006 – Variance pursuant to Z.R. 72-21 to permit the proposed 8,847 square foot drugstore without the number of parking spaces required in a C2-1 zoning district (59 spaces) and to use the R2 portion of the zoning lot for accessory required parking. The proposal is requesting waivers of ZR 22-00 and 36-21.The proposed number of parking spaces pursuant to a waiver of ZR 36-21 will be 34. The site is currently occupied by a 5,594 square foot diner with accessory parking for 37 cars.
PREMISES AFFECTED – 2270 Clove Road, corner of Clove Road and Woodlawn Avenue, Block 3209, Lots 149, 168, Richmond, Borough of Staten Island.
COMMUNITY BOARD #2SI

128-06-BZ
APPLICANT– Juan D. Reyes III, Esq., for Atlantic Walk, LLC, owner.
SUBJECT – Application June 16, Zoning variance pursuant to ZR § 72-21 to allow a nine-story residential building in an M1-5 district (Area B-2 of Special Tribeca

Mixed Use District). Twenty Six (26) dwelling units and twenty six (26) parking spaces are proposed. The development would be contrary to use (Z.R. §111-104(d) and 42-10), height and setback (Z.R. § 43-43), and floor area ratio regulations (Z.R. §111-104(d) and 43-12). The number of parking spaces exceeds the maximum allowed is contrary to Z.R. § 13-12.
PREMISES AFFECTED – 415 Washington Street, west side of Washington Street, corner formed by Vestry Street and Washington Street, Block 218, Lot 6, Borough of Manhattan.
COMMUNITY BOARD #1M

159-06-BZ
APPLICANT– Sheldon Lobel, P.C., for Shalom Kalnicki, owner.
SUBJECT – Application July 18, 2006 - Pursuant to ZR 72-21 for a variance to construct a single family home on a vacant lot which does not comply with the minimum lot width ZR 23-32 and less than the total required side yard, ZR 23-461. The premise is located in an R1-1 zoning district.
PREMISES AFFECTED – 4540 Palisade Avenue, east side of Palisade Avenue, 573' from 246th Street, Block 5923, Lot 231, Borough of The Bronx.
COMMUNITY BOARD #8BX

226-06-BZ
APPLICANT– Eric Palatnik, P.C., for Bracha Weinstock, owner.
SUBJECT – Application September 5, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family semi-detached residence. This application seeks to vary ZR 23-141(a) for open space and floor area; ZR 23-461(b) for less than the minimum side yard of 8 feet; ZR 23-47 for less than the minimum rear yard and ZR 23-631 for perimeter wall height. The premise is located in an R3-2(HS) zoning district.
PREMISES AFFECTED – 1766 East 28th Street, between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of Brooklyn.
COMMUNITY BOARD #15BK

234-06-BZ
APPLICANT– Law Office of Fredrick A. Becker, for Martin Gross and Batsheva Gross, owners.
SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of single family residence. This application seeks to vary ZR 23-141(a) for open space and floor area, ZR 23-47 for less than the minimum rear yard and ZR 23-461 for less than the minimum side yard. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1085 East 22nd Street, east side, between Avenue J and K, Block 7604, Lot 38, Borough of Brooklyn.
COMMUNITY BOARD #14BK

235-06-BZ
APPLICANT– Law Office of Fredrick A. Becker, for Susan Rosenberg, owner.
SUBJECT – Application September 11, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence. This application seeks to vary ZR 23-141 for open space and floor area and ZR 23-47 for les than the minimum rear yard. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 3155 Bedford Avenue, east side of Bedford Avenue, between Avenue J and Avenue K, Block 7607, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 19, 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, July 11, 2006 as printed in the bulletin of July 20, 2006, Vol. 91, Nos. 27 & 28. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

149-01-BZ, Vol. II
APPLICANT – Eric Palatnik, P.C., for Jane Street Realty, LLC, owner.
SUBJECT – Application June 19, 2006 – This application is to Reopen and Extend the Time to Complete Construction for the inclusion of the first and cellar floor areas of an existing six-story building for residential use and to obtain a Certificate of Occupancy which expired on June 18, 2006. The premise is located in an R6 zoning district.
PREMISES AFFECTED – 88-90 Jane Street, North side of West 12th Street, between Washington Street and Greenwich Street, Block 641, Lot 1001-1006, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Eric Palatnik and Doris Diether, Community Board #2.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment for an extension of time to complete construction and obtain a certificate of occupancy for the conversion of community facility space to six residential dwelling units and a recreation space within an existing six-story residential building; 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 decision on September 19, 2006; and

WHEREAS, on June 18, 2002 under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R6 zoning district the conversion of community facility space on the cellar level and first floor of an existing six-story building to additional residential dwelling units and recreation space; and

WHEREAS, one of the conditions of the grant was that construction be completed and a new certificate of occupancy be obtained by June 18, 2006; and

WHEREAS, the applicant represents that construction has been delayed as a result of construction-related and financing issues; and

WHEREAS, however, the applicant represents that construction is near completion and should be finished in September 2006; and

WHEREAS, the applicant submitted photographs of the site which illustrate that a significant amount of work has been completed; and

WHEREAS, the applicant requests additional time to obtain the certificate of occupancy; and

WHEREAS, additionally, at the time of the original grant, the applicant volunteered to restrict, for a term of ten years, the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate; and

WHEREAS, further, the applicant agreed to provide documentation of the housing terms and occupancy prior to obtaining a certificate of occupancy; and

WHEREAS, the Community Board has requested documentation that these terms will be met; and

WHEREAS, at hearing, the Board asked the applicant to identify which unit would be subsidized and to provide documentation of the agreed-upon parameters; and

WHEREAS, the applicant submitted into the record a statement which identifies the subsidized unit (on the first floor) to be occupied only by a qualifying senior citizen for a ten-year term (starting from the issuance of the certificate of occupancy); and

WHEREAS, accordingly, the Board finds that it is appropriate to grant an extension of time to obtain a certificate of occupancy; and

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said resolution having been adopted on June 18, 2002, so that as amended this portion of the resolution shall read: "to permit a one year extension of time to obtain a certificate of occupancy, *on condition*:

THAT a new certificate of occupancy shall be obtained by September 19, 2007, one year from the date of this grant;

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect;

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. 102849777)

Adopted by the Board of Standards and Appeals, September 19, 2006.

167-55-BZ

APPLICANT – Vassalotti Associates Architects, for Gargano Family Patnership, owner; Joseph Brienza, lessee.
SUBJECT – Application April 25, 2006 – Pursuant to ZR§11-411 and ZR §11-412 to Reopen and Extend the Term of Variance/Waiver for a Gasoline Service Station (Gulf Station), with minor auto repairs which expired on October 7, 2005 and for an Amendment to permit the sale of used cars. The premise is located in R3-1 zoning district.
PREMISES AFFECTED – 20-65 Clintonville Street, north corner of the intersection of Clintonville Street and Willets Point Boulevard, Block 4752, Lot 1, Borough of Queens
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Hiram A. Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

131-93-BZ
APPLICANT – Eric Palatnik, P.C., for Al & Selwyn, Inc., owner.
SUBJECT – Application April 10, 2006 – Extension of Term/Amendment - pursuant to Z.R. §§11-411 & 11-412 to extend the term of an automotive service station which expired on November 22, 2004. The application seeks an amendment of the previous BSA resolution so as to authorize the enlargement of the existing one story masonry building to include two additional service bays and to expand the auto sales use to accommodate the display of twenty motor vehicles an increase from the previously approved five motor vehicles. The subject premises is located in a C2-2/R5 zoning district.
PREMISES AFFECTED – 3743-3761 Nostrand Avenue, north of the intersection of Avenue "Y", Block 7422, Lot 53, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for continued hearing.

133-94-BZ
APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.
SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.
PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Alfonso Duarte, P.E.
ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for continued hearing.

171-95-BZ
APPLICANT – Law Office of Howard Goldman, LLC, for The Chapin School Limited, owner.
SUBJECT – Application July 21, 2006 – Pursuant to Z.R. §72-01 and §72-22 for an amendment to a not-for-profit all girls school (The Chapin School) for a three floor enlargement which increases the floor area and the height of the building. The premise is located in an R8B/R10A zoning district.
PREMISES AFFECTED – 100 East End Avenue, between 84th and 85th Streets, Block 1581, Lot 23, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Patricia Hayot, Howard Goldman and Larry Marner.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
ACTION OF THE BOARD – Laid over to October 17, 2006, at 10 A.M., for decision, hearing closed.

228-96-BZ
APPLICANT – Sheldon Lobel, P.C., for Five D's Irrevocable Trust, owner.
SUBJECT – Application July 15, 2006 – Extension of Term of a previously granted special permit under section 73-44 of the zoning resolution which permitted the reduction, from 40 to 25 in the number of required accessory off-street parking spaces for a New York vocational and educational counseling facility for individuals with disabilities (Use Group 6, Parking Requirement Category B1) located in an M1-1 zoning district.
PREMISES AFFECTED – 1209 Zerega Avenue, west side of Zerega Avenue between Ellis Avenue and Gleason Avenue, Block 3830, Lot 44, Borough of The Bronx.
COMMUNITY BOARD #9BX
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 October 17, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

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 – None.
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 instant appeal comes before the Board in response to a final determination of the Acting Staten Island Borough Commissioner, dated June 14, 2005 (the "2005 Final Determination") and a subsequent final determination of the Staten Island Borough Commissioner, dated May 24, 2006 (the "2006 Final Determination"); and

WHEREAS, the 2005 Final Determination was issued in response to a May 12, 2005 letter from the appellant (the Tottenville Civic Association, a not for profit entity), challenging a decision of the Department of Buildings ("DOB") to issue New Building permits for construction of two three-story, two-family residential buildings (the "Buildings") on a zoning lot comprised of two separate tax lots (Lot 47, which corresponds to 7194 Amboy Road, and Lot 74, which corresponds to 7196 Amboy Road); and

WHEREAS, Lot 72 corresponds to 26 Joline Avenue, and is currently in separate ownership from the other two lots; and

WHEREAS, the two contested permits were issued under DOB Application Nos. 500573300 (for the home on Lot 47) and 500573319 (for the home on Lot 74); and

WHEREAS, as reflected in the 2005 Final Determination, the Acting Staten Island Borough Commissioner denied this request because DOB was satisfied that there was no basis to revoke the permits; and

WHEREAS, specifically, the 2005 Final Determination reads, in pertinent part:

> "In response to your request for a final determination regarding the above listed applications I am reiterating the Department's position previously forward to you by the Deputy General Counsel Felicia R. Miller. This addresses the issues raised in your correspondence dated October 12, 2004 wherein you question whether dual ownership of Lots 47 and 72 was established prior to issuing the permit on April 21, 2004.
>
> This is to confirm that JTD Land Services Inc. certified to the Department on April 14, 2004 that these lots were in separate ownership (Exhibit I was filed for each lot). In addition, new metes and bounds descriptions of the zoning lot formed by Lot 47 and the zoning lot formed by Lot 72 were executed and recorded at this time by the respective owners, in the form of Exhibit III.
>
> You further asked for clarification as to why the merged zoning lot dissolved when the permit was revoked, whereas other zoning lots were not dissolved when permits were revoked. This is not true. A zoning lot must be formed and declared at the time a building permit is issued. Where a zoning lot relies on paragraph (c) o f the zoning lot definition set forth in the Zoning Resolution of the City of New York, the lots must be in single ownership at the time a valid permit is issued. NO zoning lot is formed if a valid permit was not issued. If, however, the zoning lot is formed based on its status as of December 15, 1961, this is not affected by a permit revocation. Nonetheless, at the time the new permit is to be issued, the metes and bounds of the zoning lot must be recorded. As stated above, the Exhibit III documents dated April 14, 2004 satisfied this requirement.
>
> Prior to the Department's issuance of permits on April 21, 2004, the title company also certified, pursuant paragraph (c) of the zoning lot definition, that each lot was in single ownership and each part-in-interest is a party in interest as defined in paragraph (e) of the zoning lot definition. Therefore, regardless of whether the lots existed as tracts of land on December 15, 1961, the lots could be accepted as individual zoning lots in connection with the issuance of permits for the separate development of the lots.
>
> While an Exhibit V was also filed that purported to waive the rights of the non-fee owner party-in-interest, this document did not serve any meaningful purpose, as a waiver is only relevant where a zoning lot is formed by a declaration pursuant to paragraph (d) of the zoning lot definition. As mentioned above, the zoning lots at issue here were formed either pursuant to paragraph (a) or (c), no pursuant to paragraph (d)."; and

WHEREAS, a public hearing was held on this application on July 18, 2006 after due notice by publication in *The City Record*, with continued hearing on August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the three lots are located in an R3A zoning district, within the Special South Richmond District (the "SSRD"); and

WHEREAS, Lot 72 has frontage only on Joline Avenue (a non-arterial street), and Lot 47 has frontage only on Amboy Road (an arterial road); Lot 74 is at the rear of Lot 47; and

WHEREAS, the three referenced lots are contiguous to each other, and on November 19, 2003, they were in single ownership; and

WHEREAS, the owner of the three lots sought to merge them into a single zoning lot, in anticipation of future development; and

WHEREAS, this purported merger was initially accepted by DOB, based upon submitted merger documentation and building permit applications for the Buildings (as noted above, Application Nos. 500573300 and 500573319); building permits under these application numbers were subsequently issued (the "Original Permits") on November 19, 2003; and

WHEREAS, however, on December 2, 2003, a DOB audit of the Original Permits revealed that the applications proposed a curb cut along an arterial street (Amboy Road) on a proposed zoning lot that had access to a non-arterial street (Joline Avenue), contrary to ZR § 107-251(a) (a special regulation applicable in the SSRD, discussed in greater detail below); and

WHEREAS, thus, on December 3, 2003, DOB issued a ten-day notice of its intent to revoke the Original Permits, as well as a stop work order, citing, among other items, concerns that (1) the permit applicant had not received approval from the City Planning Commission (CPC) for the proposed curb cuts; and (2) one of the Buildings did not front directly upon a street and therefore requires Fire Department approval pursuant to Building Code § 27-291; and

WHEREAS, as discussed further below, since the Original Permits were deemed to be invalid when issued, DOB contends that the purported zoning lot merger was invalid as well; and

WHEREAS, subsequently, amended applications were made to reinstate the Original Permits; and

WHEREAS, instead of a merger of all three lots, a merger of only Lots 47 and 74 was proposed; Lot 72 maintained as a separate zoning lot to avoid the violations of law revealed in the prior DOB audit; and

WHEREAS, during the review of the amended applications, DOB resolved the concerns reflected in the December 3, 2003 notice as well as other issues that arose, and eventually approved the applications; and

WHEREAS, thus, on April 2, 2004, DOB re-issued the permits for development on the zoning lot formed by the merger of Lots 47 and 72 (hereinafter, the "Revised Permits"); and

WHEREAS, in its initial submission to the Board, the appellant challenged the 2005 Final Determination based upon the following arguments: (1) CPC did not approve the subdivision of the zoning lot comprised of all of the three lots, purportedly formed as November 19, 2003, as required pursuant to ZR § 107-08, which provides in part, "Any subdivision that is proposed to take place within the Special District after September 11, 1975 shall be filed with the City Planning Commission, and the City Planning Commission shall certify that such subdivision complies with the approved South Richmond Plan"; and (2) because the subdivision was improper, there is still no compliance with ZR § 107-251(a), which, as noted above, provides in part "Curb cuts are not permitted along an *arterial street* on *zoning lots* with access to a non-*arterial street*"; and

WHEREAS, as to the first argument, the appellant argues that the application to merge Lots 47, 74, and 72 on November 19, 2003 was in fact successful and must be credited by DOB because the lots were in common ownership at the time the application was made; and

WHEREAS, in support of this argument, the appellant cites to another provision of ZR § 107-251(a), which states that within the SSRD "adjoining zoning lots in the same ownership shall be treated as one zoning lot"; and

WHEREAS, as noted above, DOB disputes appellant's claims that the three lots were merged on November 19, 2003; and

WHEREAS, DOB notes that the Original Permits relied on the creation of a single zoning lot out of a tract of land owned by a single fee owner, pursuant to ZR § 12-10(c) "Zoning Lot"; and

WHEREAS, ZR § 12-10(c) provides that a zoning lot is a "tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single block, which at the time of filing for a building permit… is under single fee ownership and with respect to which each party having any interest therein is a party in interest."; and

WHEREAS, according to a certification from JTD Land Services Inc. as agent for Fidelity Title Insurance Company of New York dated May 23, 2003, Maria LaMarch was the single fee owner of Lots 47, 74, and 72 as of that date; and

WHEREAS, however, DOB asserts that a zoning lot can only be formed under paragraph (c) of the zoning lot definition set forth at ZR § 12-10 if based upon valid permits; and

WHEREAS, DOB contends that although the owner obtained the Original Permits on November 19, 2003, they were later found to be defective; and

WHEREAS, specifically, as noted above, the audit revealed a violation of the provision within ZR § 107-251(a) that provides in part that "Curb cuts are not permitted along an *arterial street* on *zoning lots* with access to a non-*arterial street*"; and

WHEREAS, DOB states that in light of the noted violation, the site could not be developed as a single zoning lot without contravening the ZR; therefore, the Original Permits were invalid; and

WHEREAS, DOB further notes that the appellant does not dispute that the Original Permits were issued in error; and

WHEREAS, the Board agrees with DOB: because the Original Permits were invalid when issued, the merger of the three lots was never lawfully effected; and

WHEREAS, thus, CPC did not need to approve a subdivision pursuant to ZR § 107-08; and

WHEREAS, as to the second argument, the appellant contends there are still curb cuts along an arterial street on a

zoning lot having access to a non-arterial street in violation of ZR § 107-251(a); and

WHEREAS, DOB notes that that the appellant mistakenly believes that the three lots were still in the same ownership at the time the Revised Permits were issued, and again erroneously argues that the three lots must be treated as a single zoning lot for purposes of applying ZR § 107-251(a); and

WHEREAS, DOB represents that the three lots were no longer in same ownership as of April 2, 2004, prior to the issuance of the Revised Permits; and

WHEREAS, in support of this representation, DOB relies upon a title report prepared by Direct Land Services Corp., dated September 8, 2004, showing that Willow Avenue Realty Inc. owned Lots 47 and 74 as of April 2, 2004 and that Maria LaMarch owned Lot 72 as of March 23, 2001; and

WHEREAS, thus, DOB concludes that there is no violation of ZR § 107-251(a); and

WHEREAS, specifically, DOB notes that Lots 47 and 74 have access only to Amboy Road (an arterial; and

WHEREAS, the Board agrees with DOB as to the appellant's second argument, for the reasons given; and

WHEREAS, accordingly, the Board finds that the 2005 Final Determination was properly issued and must be upheld; and

WHEREAS, subsequent to issuance of the 2005 Final Determination and during the pendency of the instant appeal, the appellant submitted supplemental arguments to DOB, which resulted in the issuance of the 2006 Final Determination; and

WHEREAS, the 2006 Final Determination reads, in pertinent part:

"The following represents the final determination of 5 issues, raised by you, in connection with proposed BSA case for the above referenced addresses [7194 and 7196 Amboy Road]:

"1. Obstruction within front yards, side yards, and rear yards areas. Specifically, overhang at front step of 7194 Amboy Road.
It is determined by inspection and plan review that said overhang is on 12" eave. Under 23-12 permitted obstruction in open space, an eave is allowable in a setback area. This office has found no impermissible obstruction in setback area.

2. Permissible obstruction in side yards, specifically, stairs descending from grade to cellar level within 5' side yard.
Under 23-44(a) steps are permitted obstruction in side yards. The section does not specify whether stairs should ascend or descend.

3. Under ZR 107-465 the second floor of a residence must be setback from rear lot line by 30 feet.
Specifically, that the rear setback at the second floor of 7194 Amboy Road does not comply with the referenced section of the zoning resolution.
Under ZR 107-465 in force at the time the job was approved and permitted as well as while the foundation was laid and completed, the second floor of an applicable structure must be set back 30' from rear property line.
By inspection and review, this office has determined that the second floor at 7194 Amboy Road complies with section 107-465 and is setback in total 30' from the rear lot line.

4. Curb cut under ZR 25-632(b) may only be 18' from splay to splay for the lots at least 33' in width.
Specifically, the curb cut at 7194 Amboy is 27'-0" and therefore does not comply.
This office is in receipt of a letter from FDNY requesting that the access road constructed to access road 7196 Amboy Road shall be a minimum of 20' wide to accommodate emergency vehicles. Therefore, under 25-631, under exception for fire department access, the curb cut is permitted to be 20' to match the width of the access road.
Furthermore, applicant received permission from the Acting Borough Commissioner to construct and maintain an additional 7'-6" curb cut contiguous with private access entry to accommodate entry to garage at 7194 Amboy.

5. Lastly, construction within the widening line and record line is prohibited.
Specifically, that major improvements have been constructed within said widening line at 7194 Amboy Road.
At the time of permitting and construction, DOB approved non-major improvements within the widening line."; and

WHEREAS, in a July 17, 2006 submission, the appellant addressed some of these issues and raised an additional issue regarding tree removal; and

WHEREAS, specifically, the appellant alleges that that NB No. 500573319 (one of the Revised Permits, relating to the building at 7196 Amboy Road) is invalid because: 1) the proposed building eave overhangs a 20-foot arterial setback applicable in the SSRD, contrary to another provision within ZR § 107-251(b); (2) the stairs and an unenclosed porch shown on the approved plans for 7196 Amboy Road may penetrate the same setback area; and (3) the driveway grade at 7196 Amboy Road is excessive, contrary to ZR § 25-632(g); and

WHEREAS, the appellant also makes a fourth argument, that both revised Permits (NB Nos. 500573300 and 500573319) are invalid because the curb cut providing access to 7196 and 7194 Amboy Road is too wide; and

WHEREAS, finally, the appellant argues that as to NB No. 500573293, which relates to 26 Joline Avenue, no required tree restoration occurred following the removal of trees, as required pursuant to ZR § 107-321; and

WHEREAS, as to the first and second arguments, the appellant notes that ZR § 107-251(b) provides, in sum and substance, that along portions of arterials (such as Amboy Road), a 20 ft. building setback shall be provided for the full length of the front lot line abutting such arterial, and that the setback area shall be unobstructed from its lowest level to the sky, except as otherwise permitted; and

WHEREAS, the appellant alleges that the plans for the building at 7196 Amboy Road show eaves that overhang this setback area, as well as stairs and a porch that appear to penetrate it; and

WHEREAS, DOB responds that NB No. 500573319 complies with ZR § 107-251(b) by providing a 20-foot building setback for the full length of the front lot line abutting an arterial street notwithstanding a building eave that penetrates twelve inches of the setback area; and

WHEREAS, DOB notes that certain building elements, including eaves, may penetrate arterial setback areas without undermining the intent of ZR § 107-251(b) as long as they are listed as permitted obstructions in front yards under ZR § 23-44; and

WHEREAS, DOB also submitted a letter from the Department of City Planning dated July 31, 2006, confirming that CPC intended arterial setback areas to function as extended front yards to serve as visual enhancement of major roadways, and that certain obstructions are thus permissible pursuant to underlying front yard regulations; and

WHEREAS, as to the stair and unenclosed porch, DOB makes essentially the same argument, and again cites to the DCP letter dated July 31, 2005; and

WHEREAS, DOB notes that pursuant to ZR § 23-44, stairs are identified as a permitted obstruction under the category "steps and ramps for access by the handicapped" and unenclosed porches are included under the permitted obstruction category "terraces or porches, open."; and

WHEREAS, DOB concludes that the steps and unenclosed porch at 7196 Amboy Road may extend into the 20-foot arterial setback area without contravening ZR § 107-251(b); and

WHEREAS, as to the third argument, the appellant notes that ZR § 25-632(g) (Driveway and curb cut regulations in lower density growth management areas), provides that the maximum grade of driveways is limited to 11 percent; and

WHEREAS, the appellant notes that the plans for the building at 7196 Amboy Road reflect an impermissible driveway grade; and

WHEREAS, DOB responds that this claim is moot, since the Revised Permit for 7196 Amboy Road was issued on April 21, 2004, before the August 12, 2004 effective date of ZR § 25-632(g); and

WHEREAS, further, the Board received testimony confirming that the driveway was constructed prior to the effective date of this provision and therefore vested; and

WHEREAS, as to the fourth argument, the appellant notes that pursuant to ZR § 25-632(b), a zoning lot with at least 33 feet of frontage along a street with a driveway wider than 12 feet may have a curb cut with a maximum width of 18 feet; and

WHEREAS, here, a plan titled "Drawing A-1 FD" shows a 24-foot wide curb cut with two 18-inch wide splays, servicing the two proposed buildings; and

WHEREAS, in a submission dated September 1, 2006, DOB states that it approved the wider curb cut to satisfy the requirements of the Fire Department; and

WHEREAS, ZR § 25-631 provides: "[W]here Fire Department regulations set forth in the Administrative Code of the City of New York require curb cuts of greater width than listed in this chart, such curb cuts may be increased to the minimum width acceptable to the Fire Department."; and

WHEREAS, DOB cites to an August 29, 2006 letter from Patrick McNally, Chief of Operations at the Fire Department, which states in sum and substance that the Fire Department would not have approved a curb cut measuring less than 24 feet wide; and

WHEREAS, DOB notes that the cut is 24 ft., with two standard 18-inch wide splays, and therefore concludes that the revised Permits properly allowed the curb cut to exceed the limitation of ZR § 25-632(b); and

WHEREAS, the Board agrees that the 24 ft. curb cut, with the splays, is permitted and compliant; and

WHEREAS, finally, the Board notes that the tree removal allegation is not properly before the Board, since it was not subject to final DOB determination in either the 2005 or 2006 Final Determinations; and

WHEREAS, DOB has indicated that it will review this allegation, and take appropriate action as indicated; and

WHEREAS, accordingly, the Board declines to render a determination as to this issue; and

WHEREAS, in sum, the Board has reviewed the appellant's arguments as to those determinations appealed from the 2006 Final Determination, as well as DOB's responses; and

WHEREAS, the Board again credits DOB's responses, and finds that there is no basis to revoke the Revised Permits; and

WHEREAS, accordingly, the Board upholds the 2006 Final Determination as well.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Acting Staten Island Borough Commissioner, dated June 14, 2005 and a subsequent determination of the Staten Island Borough Commissioner, dated May 24, 2006, as well as the revocation of DOB Permit Nos. 500573300 and 500573319, is hereby denied.

Adopted by the Board of Standards and Appeals, September 19, 2006.

364-05-A

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

SUBJECT – Application December 19, 2005 – An appeal seeking a determination that that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.
PREMISES AFFECTED – 87-30 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.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT –
Affirmative:.....0
Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
THE RESOLUTION:

WHEREAS, this matter is an application for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R5 zoning district; and

WHEREAS a public hearing was held on this application on April 14, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006, July 11, 2006, July 25, 2006, August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the Board notes that this matter was heard concurrently with BSA Cal. No. 365-04-A; and

WHEREAS, the subject application relates to 87-30 167th Street (Tentative Lot 114) and BSA Cal. No. 365-05-A relates to 87-32 167th Street (Tentative Lot 116); the two lots are adjacent; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, Community Board 8, Queens, and Council Member Gennaro recommend approval of this application; and

WHEREAS, the Queens Civic Congress and Assembly Member McLaughlin oppose this application; and

WHEREAS, the Department of Buildings appeared in opposition only as to this matter and not BSA Cal. No. 365-05-A, for reasons discussed below; and

WHEREAS, the subject premises is situated on the west side of 167th Street, approximately 250 ft. north of the corner formed by the intersection of Hillside Avenue and 167th Street; and

WHEREAS, the premises is comprised of the two above-mentioned tentative tax lots, each of which is 30 ft. in width; and

WHEREAS, the applicant states that the developer/owner of the subject premises (hereinafter, the "Developer") purchased the site in 2001 and demolished the pre-existing home; and

WHEREAS, at this time, the premises was within an R5 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to sub-divide the premises, and obtained the two tentative tax lot numbers and street addresses; and

WHEREAS, on July 31, 2003, DOB approved plans for the construction of a conforming and complying three-story semi-detached home on each of the new lots; and

WHEREAS, the applicant states that the two proposed homes share a party wall and continuous foundation walls; and

WHEREAS, there was a separate DOB application for each home: (1) DOB Application No. 401612359 for the proposed home on Lot 116; and (2) DOB Application No. 401612340 for the proposed home on Lot 114; and

WHEREAS, as part of the plan approval for Application No. 401612340, DOB implemented what is known as a "List of Required Items", which is a checklist of items that must be received by DOB prior to the issuance of a building permit under the application number; and

WHEREAS, one of the required items reads "Site Safety Plan"; this requirement was listed on the "List of Required Items" as of July 31, 2003; and

WHEREAS, over one year later, on September 3, 2004, the Developer sought construction permits under the two applications; and

WHEREAS, on this date, DOB issued a permit for Application No. 4016122359, for the proposed home on Lot 116 (hereinafter, the "116 Permit"); and

WHEREAS, however, DOB refused to issue a permit for Application No. 401612340, for the proposed home on Lot 114 (hereinafter, the "114 Permit"), on the basis that the "Site Safety Plan" requirement had not been satisfied; and

WHEREAS, the developer commenced foundation construction on Lot 116, and despite not possessing a permit for Lot 114, illegally commenced foundation construction on that lot as well; and

WHEREAS, the applicant states, and DOB concedes, that the "Site Safety Plan" requirement was placed on the "List of Required Items" for Application No. 401612340 in error, as such a plan is only required for proposed buildings that are greater than 15 stories in height; and

WHEREAS, the applicant states that the "Site Safety Plan" requirement was waived by DOB on September 22, 2004, at the Developer's request; and

WHEREAS, DOB notes that on this date, the Developer did not bring to DOB a copy of the application folder for Application No. 401612340 and therefore did not obtain the 114 Permit; and

WHEREAS, DOB states that the Developer retains the application folder until issuance of a permit; DOB would only possess the folder after the issuance; and

WHEREAS, on October 13, 2004 (hereinafter, the "Rezoning Date"), the City Council voted to approve the Jamaica Hill Rezoning, which rezoned the premises from R5 to R4A and rendered the two proposed homes both non-conforming and non-complying; and

WHEREAS, specifically, as to use, the two proposed semi-detached three-family homes are not permitted; only single- and two-family detached homes are permitted under R4A zoning district regulations; and

WHEREAS, as to Floor Area Ratio (FAR), the home on Lot 114 has a proposed FAR of 1.09 and the home on Lot 116 has a proposed FAR of 1.04; the maximum permitted under the R4A zoning parameters is 0.90, including an attic allowance of 0.15; and

WHEREAS, on December 14, 2004, over two months after the Rezoning Date, the Developer erroneously obtained the 114 Permit from DOB; however, the 114 Permit was invalid because it authorized construction of a home that did not conform and comply with the new R4A zoning district parameters; and

WHEREAS, on February 7, 2005, DOB issued a stop-work order as to the 114 Permit on this basis; on this same date, DOB also issued a stop-work order as to the 116 Permit; and

WHEREAS, the applicant represents that at the time the two companion applications were filed, each of the proposed homes were about 85 percent complete; and

WHEREAS, the applicant requests that the Board find that the Developer has obtained a vested right to continue construction on both homes; and

WHEREAS, for reasons set forth in a separate resolution, the Board grants the application made under BSA Cal. No. 365-05-A the date hereof; and

WHEREAS, under the instant application, the applicant has also asked the Board to vest the right to complete construction of the proposed home on Lot 114 under the prior R5 zoning; and

WHEREAS, in spite of the fact that foundation work on Lot 114 was done illegally in the absence of a permit, the applicant makes the following arguments, as summarized in a September 12, 2006 submission: (1) the Developer was entitled to the 114 Permit as a matter of right and the Board should issue it *nunc pro tunc*; (2) the right to finish construction on both homes was vested pursuant to the "single integrated project theory" ("SIPT"), as established by New York State courts; (3) it would be inequitable to allow DOB to repudiate its prior conduct of refusing to issue the 114 Permit; and (4) the Developer has met the test for common law vesting as to the entire premises, including Lot 114; and

WHEREAS, as to the first argument, the applicant states, in sum and substance, that DOB had no discretion to deny the issuance of the 114 Permit on September 14, 2004, and that such denial was an arbitrary and therefore impermissible act; and

WHEREAS, the applicant notes that the "Site Safety Plan" requirement was clearly erroneous and solely the fault of DOB; and

WHEREAS, the applicant contends that on this basis, the Board should reinstate the 114 Permit and deem it valid on a retroactive basis to September 14, 2006, thereby legalizing all work performed on Lot 114 after that date; and

WHEREAS, in support of this contention, the applicant cites to certain cases where courts found that where the governmental entity that issues construction permits improperly placed obstacles in the way of a developer as they attempt to vest construction, a construction permit may be reinstated by the reviewing court *nunc pro tunc*; and

WHEREAS, the applicant cites to Matter of Faymor Development Co., 57 A.D.2d 928 (2d Dep't. 1977); Matter of Bayswater Health Related Facility v. Karagheuzoff, 37 N.Y.2d 408 (1975); and Cooper et al. v. Dubow et al., 41 A.D.2d 843 (2d Dep't. 1973); and

WHEREAS, the applicant argues that the improper "Site Safety Plan" requirement was an improperly placed obstacle, and but for DOB's interference, the Developer would have been able to obtain the 114 Permit on the same date that the 116 Permit was obtained; and

WHEREAS, DOB disagrees, stating that there was no improper municipal interference as occurred in Faymor, Bayswater and Cooper; and

WHEREAS, instead, the listing of the requirement was merely a clerical error that could have easily been remedied, as occurred when the Developer brought it to the attention of DOB on September 22, 2004; and

WHEREAS, further, DOB notes that in the cited cases, the developers had actually obtained permits prior to the date of the zoning change, unlike the Developer here; and

WHEREAS, as a threshold issue, the Board notes that it does not have the authority to issue a building permit *nunc pro tunc*, since this is an equitable power reserved to courts of law and not zoning boards; and

WHEREAS, further, even if it did possess such authority, the Board agrees with DOB's arguments; and

WHEREAS, the Board observes that the 114 Permit was not obtained as of the Rezoning Date and that all work on Lot 114 was therefore performed illegally; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986)); and

WHEREAS, here, the erroneous "Site Safety Plan" requirement was known to the Developer on July 31, 2003, over one year prior to Rezoning Date; and

WHEREAS, while the clerical error is not the Developer's fault, the Board agrees that nothing prevented the Developer from rectifying this error well in advance of the Rezoning Date so that the 114 Permit could be issued in time for construction on Lot 114 to commence; and

WHEREAS, moreover, the Board agrees that the Developer had the opportunity to obtain the 114 Permit prior to the Rezoning Date after remedying the DOB error on September 28, 2004, but inexplicably failed to do so; and

WHEREAS, DOB notes, and the applicant does not dispute, that DOB allows all registered architects and professional engineers to have professional priority to review problems with applications at DOB borough offices, on a daily walk-in basis; and

WHEREAS, DOB also notes that the project architect is on the Queens Borough office walk-in list; and

WHEREAS, thus, in spite of being in a position to

obtain the 114 Permit, the Developer failed to do; and

WHEREAS, the Board also agrees that the instant set of circumstances is drastically different than those presented in Faymor, Bayswater, and Cooper; and

WHEREAS, in all three of these cases, the developers had obtained permits that were subsequently revoked on impermissible grounds; and

WHEREAS, here, the Developer did not obtain the 114 Permit but illegally proceeded with construction on Lot 114 anyway; and

WHEREAS, further, none of the developers in the cited cases could easily remedy the alleged problems with the permits; and

WHEREAS, here, the Developer had a clear and unobstructed opportunity to obtain the 114 Permit; nothing stood in the way of this aside from the Developer's own failure to take appropriate action; and

WHEREAS, in sum, there was no municipal interference whatsoever, just a clerical error that was resolved in sufficient time for the Developer to have obtained the 114 Permit prior to the Rezoning Date; and

WHEREAS, thus, the Board is not persuaded by the applicant's first argument, and declines to order the re-issuance of the 114 Permit *nunc pro tunc*; and

WHEREAS, the applicant's second argument is that under the SIPT, the Developer has obtained a vested right based upon the work performed under the 116 Permit; and

WHEREAS, the SIPT, as applied by New York courts and a few other state courts, allows a developer to vest uncompleted, even uninitiated, components of a larger development project (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applied by a court if the following requirements are met: (1) the reviewing approval body was on notice that the various building components were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the two proposed homes, by virtue of their shared party and foundation walls, are a lower-scale version of a single integrated project; and

WHEREAS, the applicant argues, and the Board agrees, that in the SIPT cases, it is not necessary that building permits have been obtained for each and every building proposed to be vested; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in stages, and it is more logical for permits to be obtained on a plat by plat basis; and

WHEREAS, the applicant argues that the subject development of the subject two semi-attached homes meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing both homes, and thus was on notice that the two homes were proposed to be developed as a single integrated development; and

WHEREAS, the applicant then notes that the foundation of the home on the 116 Lot was constructed, satisfying the requirement that work on a fundamental component of the development was completed; and

WHEREAS, further, the party wall was constructed under the 116 Permit, representing physical work and expenditure related to the entire integrated development; and

WHEREAS, finally, the applicant contends that the existing construction on the premises could not be adapted to a complying development under the R4A zoning without significant loss, given the degree of construction already performed that would have to be either demolished or structurally altered; and

WHEREAS, the applicant suggests that under the SIPT, the lack of the 114 Permit and the illegal construction on Lot 114 could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, the Board acknowledges that there are some similarities between the projects discussed in the SIPT cases and the instant matter; and

WHEREAS, however, the Board also notes that there does not appear to be any case precedent for the application of the SIPT to a development project as small as the one presented here; and

WHEREAS, thus, the Board rejects the applicant's argument because it is not persuaded that the SIPT should be applied to low-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses two homes, the Developer could easily obtain the permits needed for both at the same time, and indeed attempted to do so; and

WHEREAS, in fact, the applicant argues that the 114 and 116 Permits should only have been issued by DOB at the same time, since this was not a project that was anticipated to be constructed in stages, and since the compliance of the home on Lot 116 purportedly relies upon the existence of the home on Lot 114; and

WHEREAS, this is different than the large-scale multi-

plat projects discussed in the SIPT cases, where simultaneous obtainment of permits for each and every building is not feasible; and

WHEREAS, accordingly, here, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's two home project; and

WHEREAS, even assuming that it did apply, the Board finds that not all of the SIPT requirements have been met; and

WHEREAS, as discussed above, the applicant contends that the home proposed for Lot 116 does not comply with the prior R5 zoning requirements in the absence of the home on Lot 114; and

WHEREAS, the applicant argues that this supports the notion that the two homes are fundamentally integrated and that economic harm would result if no second home could be built on Lot 114; and

WHEREAS, notwithstanding these allegations, the Board has reviewed the record and can find no evidence that the home proposed for Lot 116, if completed, would not comply with the R5 zoning parameters; and

WHEREAS, further, the Board finds that an economic harm argument cannot be predicated on costs related to the demolition or alteration of work completed on Lot 114, since any such work was performed illegally, with the Developer fully cognizant of its illegality prior to its commencement; and

WHEREAS, the Board observes that none of the SIPT cases involved instances where the developer proceeded with construction knowingly in violation of permitting requirements; and

WHEREAS, the Board finds that this fact alone is a sufficient reason not to apply the SIPT to the instant facts; and

WHEREAS, accordingly, the Board rejects the applicant's second argument; and

WHEREAS, the applicant's third argument is that it would be inequitable to deny the Developer the right to proceed under the prior R5 zoning since DOB's plan approval indicated to him that he would have the right to construct both buildings; and

WHEREAS, more specifically, the applicant argues that that the Developer would not have incurred any expense associated with construction on Lot 114 if he had not reasonably assumed that the 114 Permit was to be issued; and

WHEREAS, in support of this argument, the applicant cites to a Georgia case Cohn Communities, Inc. v. Clayton County, 359 S.E.2d 887 (1987), in which the court held that "where a landowner makes a substantial change in position by expenditures in reliance upon the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance"; and

WHEREAS, the Board notes that this is an equitable argument based upon state precedent; and

WHEREAS, while the Board acknowledges that the Cohn case may be valid law in the State of Georgia, it respectfully disagrees that the holding of this case applies to development in the State of New York; and

WHEREAS, as noted above, in New York, the general rule is that vested rights arise out of the issuance of a permit for the construction of the building, not out of a plan approval; and

WHEREAS, the applicant also cites to Greene v. Brach, 40 A.D.2d 1048 (1972) for the same proposition; and

WHEREAS, however, the Board notes that this case is not similar to the instant matter; and

WHEREAS, in Greene, the developer, after commencing construction pursuant to valid building permits, was subjected to a myriad of contradictory municipal determinations that obstructed further construction; and

WHEREAS, the court ultimately found that the developer had obtained a vested right to complete construction pursuant to a plat approval that did not reflect the form of construction contemplated by the permits; and

WHEREAS, however, in reaching this conclusion, the court noted that the developer was compelled to change his development due to the contradictory actions of the municipality; and

WHEREAS, and as in other cases already discussed herein, the developer actually had permits; and

WHEREAS, here, there was no municipal interference and no permit authorizing development on Lot 114; and

WHEREAS, while the Developer may have expected to receive a permit for Lot 114, construction is not authorized and vesting may not occur unless and until the permit is obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer, and therefore rejects the applicant's third argument; and

WHEREAS, finally, as noted above, the Board does not possess the broad equitable powers needed to render the determination that the applicant suggests, even if New York precedent for it existed; and

WHEREAS, the applicant's fourth argument is that it has met the technical findings of substantial construction and substantial construction as to both proposed homes; and

WHEREAS, however, this argument presumes that the Board accepts any of the three prior arguments, and therefore is in a position to ignore the lack of a valid permit as to construction on Lot 114; and

WHEREAS, since the Board disagrees with these arguments, consideration of the applicant's fourth argument is unnecessary; and

Therefore it is Resolved that this application made under BSA Cal. No. 364-05-A, relating to 87-30 167th Street (Tentative Lot 114) and DOB Application No. 401612340 is hereby denied.

Adopted by the Board of Standards and Appeals, September 19, 2006.

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

WHEREAS a public hearing was held on this application on April 4, 2006 after due notice by publication in *The City Record*, with continued hearings on June 6, 2006, July 11, 2006, July 25, 2006, August 22, 2006, and then to decision on September 19, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the Board notes that this matter was heard concurrently with BSA Cal. No. 364-04-A; and

WHEREAS, the subject application relates to 87-32 167th Street (Tentative Lot 116) and BSA Cal. No. 364-05-A relates to 87-30 167th Street (Tentative Lot 114); the two lots are adjacent; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently and the record is the same for both; and

WHEREAS, Community Board 8, Queens, and Council Member Gennaro recommend approval of this application; and

WHEREAS, the Queens Civic Congress and Assembly Member McLaughlin oppose this application; and

WHEREAS, the Board notes that the Department of Buildings appeared in opposition only as to BSA Cal. No. 364-05-A, not the instant application; and

WHEREAS, the subject premises is situated on the west side of 167th Street, approximately 250 ft. north of the corner formed by the intersection of Hillside Avenue and 167th Street; and

WHEREAS, the premises is comprised of the two above-mentioned tentative tax lots, each of which is 30 ft. in width; and

WHEREAS, the applicant states that the developer/owner of the subject premises (hereinafter, the "Developer") purchased the site in 2001 and demolished the pre-existing home; and

WHEREAS, at this time, the premises was within an R5 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to sub-divide the premises, and obtained the two tentative tax lot numbers and street addresses; and

WHEREAS, on July 31, 2003, DOB approved plans for the construction of a conforming and complying three-story semi-detached home on each of the new lots; and

WHEREAS, the applicant states that the two proposed homes share a party wall and continuous foundation walls; and

WHEREAS, there was a separate DOB application for each home: (1) DOB Application No. 401612359 for the proposed home on Lot 116; and (2) DOB Application No. 401612340 for the proposed home on Lot 114; and

WHEREAS, as part of the plan approval for Application No. 401612340, DOB implemented what is known as a "List of Required Items", which is a checklist of items that must be received by DOB prior to the issuance of a building permit under the application number; and

WHEREAS, one of the required items reads "Site Safety Plan"; this requirement was listed on the "List of Required Items" as of July 31, 2003; and

WHEREAS, over one year later, on September 3, 2004, the Developer sought construction permits under the two applications; and

WHEREAS, on this date, DOB issued a permit for Application No. 4016122359, for the proposed home on Lot 116 (hereinafter, the "116 Permit"); and

WHEREAS, however, DOB refused to issue a permit for Application No. 401612340, for the proposed home on Lot 114 (hereinafter, the "114 Permit"), on the basis that the "Site Safety Plan" requirement had not been satisfied; and

WHEREAS, the developer commenced foundation construction on Lot 116, and despite not possessing a permit for Lot 114, illegally commenced foundation construction on that lot as well; and

WHEREAS, the applicant states, and DOB concedes, that the "Site Safety Plan" requirement was placed on the "List of Required Items" for Application No. 401612340 in error, as such a plan is only required for proposed buildings that are greater than 15 stories in height; and

WHEREAS, the applicant states that the "Site Safety Plan" requirement was waived by DOB on September 22, 2004, at the Developer's request; and

WHEREAS, DOB notes that on this date, the Developer did not bring to DOB a copy of the application folder for Application No. 401612340 and therefore did not obtain the 114 Permit; and

WHEREAS, DOB states that the Developer retains the

application folder until issuance of a permit; DOB would only possess the folder after the issuance; and

WHEREAS, on October 13, 2004 (hereinafter, the "Rezoning Date"), the City Council voted to approve the Jamaica Hill Rezoning, which rezoned the premises from R5 to R4A and rendered the two proposed homes both non-conforming and non-complying; and

WHEREAS, specifically, as to use, the two proposed semi-detached three-family homes are not permitted; only single- and two-family detached homes are permitted under R4A zoning district regulations; and

WHEREAS, as to Floor Area Ratio (FAR), the home on Lot 114 has a proposed FAR of 1.09 and the home on Lot 116 has a proposed FAR of 1.04; the maximum permitted under the R4A zoning parameters is 0.90, including an attic allowance of 0.15; and

WHEREAS, on December 14, 2004, over two months after the Rezoning Date, the Developer erroneously obtained the 114 Permit from DOB; however, the 114 Permit was invalid because it authorized construction of a home that did not conform and comply with the new R4A zoning district parameters; and

WHEREAS, on February 7, 2005, DOB issued a stop-work order as to the 114 Permit on this basis; on this same date, DOB also issued a stop-work order as to the 116 Permit; and

WHEREAS, the applicant represents that at the time the two companion applications were filed, each of the proposed homes were about 85 percent complete; and

WHEREAS, the applicant requests that the Board find that the Developer has obtained a vested right to continue construction on both homes; and

WHEREAS, at the outset, the Board notes that DOB does not oppose the application to vest the right to continue construction under the 116 Permit, since it was lawfully obtained prior to the Rezoning Date, and the foundation and much of the superstructure of the home was completed prior to the Rezoning Date; 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 undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, here, the Board agrees that as to Lot 116, the applicant has met this test; and

WHEREAS, the Board notes that as of the Rezoning Date: (1) the 116 Permit was lawfully obtained; (2) foundation construction was completed; and (3) significant expenditures were made towards construction on Lot 116; and

WHEREAS, the applicant has also established that serious loss would result if the Developer were compelled to comply with the new R4A district regulations as to Lot 116, since all existing foundation and superstructure work would have to be removed, and a new building would have to be designed and constructed; and

WHEREAS, the Board notes that the applicant has submitted evidence of the above, in the form of pictures, concrete tickets, invoices for labor and material, copies of cancelled checks, and affidavits from construction personnel and the project architect; 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 on Lot 116; thus, as reflected below, the Board grants the instant application; and

WHEREAS, however, as set forth in a separate resolution, the Board is not granting the application brought under BSA Cal. No. 364-05-A for the proposed home on Lot 114; and

WHEREAS, the Board observes that because the proposed home on Lot 116 was originally designed to be a semi-attached home possessing certain shared elements with the home proposed for Lot 114, if the Developer decides to use this grant rather than proceed under the R4A zoning, certain design modifications may be required for the Lot 116 home; and

WHEREAS, the Board has no objection to such modifications provided that the footprint, floor area and height of the home proposed for Lot 116 do not increase from what was permitted under DOB Job No. 401612359, and provided that any such changes are reviewed and approved in advance by the Chair.

Therefore it is Resolved that this application, brought under BSA Cal. No. 365-05-A and relating to 87-32 167th Street (Tentative Lot 116) and DOB Permit No. 401612359 is granted; thus, DOB Permit No. 4016122359, as well as all related permits for various work types, either already issued or necessary to complete construction of the proposed home and obtain a certificate of occupancy, is reinstated for four years from the date hereof, on condition that any minor plan modifications shall be subject to further review and approval of the Chair.

Adopted by the Board of Standards and Appeals, September 19, 2006.

34-06-A
APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner.
SUBJECT – Application March 1, 2006 – proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.
PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269' north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Sungkyn Park.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
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 6, 2006, acting on Department of Buildings Application No. 402274613, reads, in pertinent part:

"Proposed new building in a mapped street, contrary to Section 35 of the General City Law of the City of New York .Board of Standards and Appeals grant is required."; and

WHEREAS, after due notice by publication in the *City Record*, a public hearing was initially scheduled for September 12, 2006, was postponed to September 19, 2006 when a public hearing was held on this application, and then moved to closure and decision on this same date; and

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

WHEREAS, by letter dated April 13, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 5, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, July 28, 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 6, 2006, acting on Department of Buildings Application No. 402274613, 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 March 20, 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, September 19, 2006.

90-06-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.
SUBJECT – Application May 8, 2006 – Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street, and the upgrade of an existing private disposal system in the bed of a mapped street and service lane is contrary to Section 35, Article 3, General City Law and Buildings Department Policy.
PREMISES AFFECTED – 9 Bedford Avenue, north side of Bedford Avenue, intersection of mapped Bayside Drive and Beach 202nd Street, Block 163, Lot 300, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Gary Lenhart.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
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 19, 2006, acting on Department of Buildings Application No. 402302450, reads, in pertinent part:

"A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A2- The proposed upgraded private disposal system

is in the bed of a mapped street contrary to Department of Buildings Policy."; and

WHEREAS, a public hearing was held on this application on September 19, 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 May 17, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated June 9, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 11, 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, April 19, 2006, acting on Department of Buildings Application No. 402302450 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 9, 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, September 19, 2006.

167-06-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Janet and John Durante, owners.

SUBJECT – Application July 31, 2006 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3 Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 519 Browns Boulevard, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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 July 10, 2006 acting on Department of Buildings Application No. 402403582, reads, in pertinent part:

"A1– The street giving access to the existing dwelling to be altered is not duly placed on the official map of the City of New York, therefore:

A) No permit or Certificate of Occupancy can be issued per Article 3, Section 36 of the General City Law;

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on September 19, 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 August 8, 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 Queens Borough Commissioner, July 10, 2006, acting on Department of Buildings Application No. 402403582, 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 July 31, 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, September 19, 2006.

168-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Tom Elbe, lessee.

SUBJECT – Application August 3, 2006 – Proposed reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R4 Zoning District.

PREMISES AFFECTED – 176 Reid Avenue, west of Reid Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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 July 17, 2006 acting on Department of Buildings Application No. 402404698, reads, in pertinent part:

"A1– The street giving access to the existing dwelling to be altered is not duly placed on the official map of the City of New York, therefore:

A) No permit or Certificate of Occupancy can be issued per Article 3, Section 36 of the General City Law;

B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on September 19, 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 August 8, 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 Queens Borough Commissioner, July 17, 2006, acting on Department of Buildings Application No. 402404698, 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 August 3, 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, September 19, 2006.

69-06-BZY

APPLICANT – Stuart A. Klein, for SMJB Associates, LLC, owner.

SUBJECT – Application April 19, 2006 – Proposed extension of time to complete construction of a minor development pursuant to ZR 11-331 for a six- story mixed use building. Prior zoning R-6. New zoning district is R5-B as of April 5, 2006.

PREMISES AFFECTED – 1599 East 15th Street, northeast corner of East 15th Street and Avenue P, Block 6762, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart Klein.

For Administration: Amandus Derr, 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 October 17, 2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 19, 2006
1:30 P.M.

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

ZONING CALENDAR

72-06-BZ
CEAR #06-BSA-076M
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.
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 April 17, 2006, acting on Department of Buildings Application No. 104397065, reads, in pertinent part:

> "Proposed Physical Culture Establishment is not permitted as of right in C5-3 and C6-1 zoning district and it is contrary to ZR 32-10."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 and C6-1 zoning district a physical culture establishment (PCE) on a portion of the first floor and the entire second floor of an existing 18-story commercial building, contrary to ZR § 32-10; 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 decision on September 19, 2006; and

WHEREAS, Community Board 5, 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 Park Avenue, between East 32nd and East 33rd Streets; and

WHEREAS, the proposed PCE will occupy a total of 40,144 sq. ft. of floor area, with 856 sq. ft. on the first floor and 39,288 sq. ft. on the second floor; and

WHEREAS, the PCE will be operated as Equinox Fitness; and

WHEREAS, the applicant represents that the PCE will offer facilities for weightlifting, cardiovascular exercise, yoga, spinning, aerobics, massage, and physical therapy; and

WHEREAS, the PCE will have the following hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

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

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

WHEREAS, the establishment of the PCE will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA076M, dated April 17, 2006; and

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

WHEREAS, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the

Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 and C6-1 zoning district a PCE on a portion of the first floor and the entire second floor of an existing 18-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 14, 2006"–(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 19, 2016;

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

THAT the hours of operation shall be limited to: Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, September 19, 2006.

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 – 1221East 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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 2, 2006, acting on Department of Buildings Application No. 302079587, reads, in pertinent part:

"1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to Sec. 23-48 Z.R. and less than the required rear yard contrary to Sec. 23-47 Z.R."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-47 and 23-48; 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 decision on September 19, 2006; and

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

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

WHEREAS, the subject lot is located on the east side of East 29th Street, 150 feet south of Avenue L; and

WHEREAS, the subject lot has a total lot area of 3,150 sq. ft., and is occupied by a 1,708.45 sq. ft. (0.54 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,708.45 sq. ft. (0.54 FAR) to 3,140 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,575 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 1.5 to .57; and

WHEREAS, the proposed enlargement will maintain one side yard at 3'-4½", an existing non-compliance, and reduce the other side yard from 9'-1½" to 6'-7½" (side yards with a minimum total width of 10'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the proposed enlargement will maintain the existing non-complying 14'-1½" front yard (a minimum front yard of 15'-0" is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 44'-3" to 20'-10" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the

rear yard is not located within 20'-0" of the rear lot line; and

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

WHEREAS, at hearing, the Board directed the applicant that changes to the existing garage should be per DOB approval; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 12, 2006"–(5) sheets, "August 9, 2006"–(6) sheets, "September 6, 2006"–(1) sheet and "September 7, 2006"–(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,140 sq. ft., a total FAR of .99, all as illustrated on the BSA-approved plans;

THAT there shall be no more than 476.8 sq. ft. of floor area in the attic;

THAT the proposed shed shall be as be approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 19, 2006.

113-06-BZ
CEQR #BSA-096M

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: James Power.

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 May 12, 2006, acting on Department of Buildings Application No. 104424650, reads, in pertinent part:

> "Expansion of Science Studies Tower. Proposed lot coverage is exceeded, and is contrary to ZR 24-11. Proposed [street wall] height and setback is exceeded, and is contrary to ZR 24-522."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229'-6" high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage, front height, and setback, contrary to ZR §§ 24-11 and 24-522; 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 decision on September 12, 2006; on this date the decision was deferred to September 19, 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 9, Manhattan, states that it has no objections to the proposed variances, but indicated that it was not satisfied with the current architectural renderings of the proposed building (the "Building"); and

WHEREAS, the Morningside Heights Historic District Committee 9"MHDC") and certain neighbors also appeared in opposition to this application; and

WHEREAS, the concerns of the Community Board, MHDC and the neighbors are discussed below; and

WHEREAS, this application was brought on behalf of Columbia University, a not for profit education institution; and

WHEREAS, the subject zoning lot is comprised of the large block bounded by Broadway, Amsterdam Avenue, and West 114th and 120th Streets; this block and an adjacent block serve as Columbia's primary campus; and

WHEREAS, the specific portion of lot to be developed is located at the northwest corner of Broadway and West 120th Street (the "Development Site"); and

WHEREAS, the applicant states that the northern portion of the Development Site is vacant to a depth of approximately 68 feet from West 120th Street, while the southern 146 ft. of the site is improved upon with a portion Columbia's gymnasium; and

WHEREAS, the Development Site is bounded to the east by Columbia's physics building, and the south by the chemistry building; the Building will be connected to these two buildings at various levels; and

WHEREAS, the Development Site, while part of a larger zoning lot, is considered a separate lot by the Department of Buildings for application of certain bulk requirements; and

WHEREAS, specifically, the Development Site is considered both a through lot (the portion located beyond 100 ft. of West 120th Street) and a corner lot (the remainder of the site); and

WHEREAS, the Building complies as to lot coverage for the through lot portion; and

WHEREAS, however, the Building is non-compliant as to lot coverage on the corner lot portion; the proposed coverage is 95% (75% is the maximum permitted); and

WHEREAS, additionally, while no variance is required for the overall height, no setbacks will be provided, except an 11'-6" setback at the first floor on West 120th Street (on wide streets such as Broadway and West 120th Street, a setback of 15 ft. is required at 85 ft. or nine stories, whichever is less); and

WHEREAS, the program of the Building is as follows: cellar and sub-cellar – mechanicals; floors two and three – cafeteria; floor four – library and entrance; floor five – classrooms and conference rooms; floor six and mezzanine – library, lecture room; floor seven through 13 – labs; and floor 14 – air handling and mechanicals; and

WHEREAS, a total of 28 labs would be provided (four on a floor), and twelve of these would connect to the physics and chemistry buildings; and

WHEREAS, each lab floor would have mezzanine levels, providing additional office, meeting, and work space; and

WHEREAS, the average floor plate size would be between 16,257 and 20,249 sq. ft.; and

WHEREAS, the floor to ceiling heights would be approximately 19 ft. high to accommodate needed mechanicals at each level, as well as tall scientific equipment and the mezzanines; and

WHEREAS, the applicant argues that the waivers are necessary to create a building with floor plates and floor to floor heights that will meet the programmatic needs of Columbia; and

WHEREAS, the applicant states that Columbia does not currently have a world-class research facility similar to those of other large universities elsewhere in the country, and that one is needed in order to stay competitive; and

WHEREAS, the applicant cites to a 2005 programming study, in which consultants hired by Columbia concluded that 28 new laboratories were needed and that they should be arranged within the Building in a manner that would encourage interdisciplinary research and maximize interaction among the sciences as well as with the campus at large; and

WHEREAS, the study recommended that the labs be 2,000 to 3,500 sq. ft., that different disciplines be represented on each floor, that each floor have communal research and support facilities, as well as lecture halls, and that the Building be connected to other science buildings to the extent possible; and

WHEREAS, other identified needs include a new library devoted to science and engineering disciplines, and a cafeteria faculty, staff and students; and

WHEREAS, the applicant contends that a complying building would not meet the stated programmatic needs of Columbia; and

WHEREAS, the applicant notes that a complying building would rise to an overall height of 317'-6", and the northern wall would be 23'-3" from West 120th Street; and

WHEREAS, a complying building would have a 10 ft. setback above the sixth floor along Broadway, in order to comply with 40 percent tower requirements, as per ZR § 24-54; and

WHEREAS, the applicant states this would result in floor plates of 9.051 to 10,451 sq. ft. each on the upper floors, and labs would be reduced in size to 1,300 to 2,00 sq. ft.; and

WHEREAS, this would limit the flexibility and functionality of the labs, and certain science disciplines would not have sufficient space to conduct necessary research; and

WHEREAS, further, a complying building would not provide the same degree of integration with the adjacent physics and chemistry buildings, with only eight out of a proposed 26 labs having direct access; and

WHEREAS, the applicant also notes that certain features of the lower floors would be compromised by the limited footprint; specifically, the large lecture hall would be eliminated and replaced by two smaller ones, the entrance area would be smaller such that the escalators would be eliminated and replaced by a traditional stairwell core, and the cafeteria would be reduced in size; and

WHEREAS, the Board credits the applicant's statements as to Columbia's programmatic needs and the limitations of a complying building; and

WHEREAS, the Board also acknowledges that Columbia, as an educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the

subject variance application; and

WHEREAS, in addition to these programmatic needs, the applicant notes that the Development Site is compromised by its adjacency to existing buildings, which effectively constricts the area available for the Building's floor plates, when lot coverage and setback regulations are applied; and

WHEREAS, the applicant states that even above the height of the gymnasium, the existing buildings restrict the buildable area to 88 ft. in the east-west direction and 214 ft. in the north-south direction; and

WHEREAS, the applicant notes that if the existing buildings were not on the zoning lot, Columbia could easily design a building that would meet its programmatic needs and still comply with lot coverage and setback requirements; and

WHEREAS, based upon the above, the Board finds that the adjacency to the Development Site of the existing buildings constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of Columbia to create a state of the art science facility, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since Columbia is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; 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 notes that the variances will allow a taller street wall (230 ft. as opposed to 85 ft.), but that this is consistent with the higher street wall context along Broadway and 120th Street; and

WHEREAS, the applicant also notes that the majority of buildings in the immediate area maintain facades at the street line without setback, including the chemistry and physics building, and other Columbia buildings; and

WHEREAS, the Board observes that the Building as proposed is more contextual with the surrounding built conditions than an as of right building, which would provide an 85 ft. street wall, set back, and then rise to a height of over 300 ft.; and

WHEREAS, the Board notes that Broadway is a wide avenue that can accommodate the additional street wall height without any significant impact on light and air to the street, as opposed to the impact that an as of right building would likely have; and

WHEREAS, as to total height, the applicant cites to buildings in the surrounding area that rise to heights that vary from 210 ft. to 237 ft.; and

WHEREAS, finally, the Board observes that any impact of the lot coverage waiver is mitigated by the provision of open space adjacent to the corner lot portion of the Development Site; and

WHEREAS, the applicant also notes that the submitted Environmental Assessment Statement ("EAS") concludes that the proposed building will be compatible with the neighborhood and is not expected to create any adverse impacts; and

WHEREAS, the Board agrees that the requested waivers will not change the character of the neighborhood or impact adjacent uses; and

WHEREAS, the Board also notes that the building will serve a vital function to Columbia, an important educational institution within New York City; in this regard, the Board concludes that the variances will enhance public welfare rather than detract from it; and

WHEREAS, finally, the Board notes that the applicant submitted a letter from its design consultant, which establishes that the master plan for the Columbia campus contemplate a building at this location, with a footprint and a configuration similar, though not identical in all respects, to the proposal; and

WHEREAS, the design consultant also represents that the proposal is consistent with the master plan; and

WHEREAS, the MHDC contested these representations, and submitted a letter regarding them on September 11, 2006; and

WHEREAS, in a further letter dated September 15, 2006, the design consultant reiterates the above and suggests that the proposal is more in keeping with the building contemplated by the master plan than an as of right building; and

WHEREAS, in the same letter, the consultant also represents that the building contemplated in the master plan would require the same waivers as the proposed building; and

WHEREAS, the Board notes, however, that its determination that the instant application meets the finding set forth at ZR § 72-21(c) does not depend on a finding that there is absolute consistency between the master plan and the proposal; rather it is predicated on an assessment of the existing context of the neighborhood and the buildings immediately adjacent to the Development Site;

WHEREAS, in addition to MHDC's concerns, certain individuals expressed concern about the design of the building, alleging that façade was not contextual with the remainder of the Columbia campus; and

WHEREAS, the Board understands the concerns of the opposition in this regard, and notes that the applicant indicated it would continue to engage in a dialogue with the community about architectural design details; and

WHEREAS, however, the Board finds that such concerns do not relate to the requested waivers or application; and

WHEREAS, those opposed to this application also suggested that the street wall height be lowered and that an as of right building might be better, as it would be less bulky and view corridors from within the Columbia campus would be less likely to be blocked; and

WHEREAS, the applicant responds by noting that a lower building would not meet the programmatic needs of Columbia; and

WHEREAS, the applicant also notes that the City's Landmarks Preservation Commission reviewed the EAS and determined that there is no effect on view corridors; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of Columbia; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address Columbia's present programmatic needs; 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, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA096M dated August 15, 2006 and in an EAS addendum for Historic Resources dated September 15, 2006; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of a site within an R8 zoning district, the proposed construction of a 229'-6" high, 14-story, 163,052 sq. ft. Use Group 3 building, serving as the science facility of Columbia University, which does not comply with applicable zoning requirements concerning lot coverage, front height, and setback, contrary to ZR §§ 24-11 and 24-522; *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 September 5, 2006"- twelve (12) sheets; and *on further condition*:

THAT lot coverage, height and setback shall be as indicated 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, September 19, 2006.

393-04-BZ

APPLICANT – Jeffrey Chester of Einbinder & Dunn, for Edythe Kurtzberg, owner; Lucille Roberts Health Clubs, Incorporated, lessee.

SUBJECT – Application December 16, 2006 – Variance pursuant to Z.R. §72-21 – Legalization of a physical culture establishment (Lucille Roberts) located within a C1-2 (R6B) Zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard, East side of Bell Boulevard, 75' north of 42nd Avenue. Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for postponed hearing.

290-05-BZ

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated 4/19/06 – Variance pursuant to Z.R. Section 72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 & 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for deferred decision.

60-06-A

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.
PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Stuart A. Klein.

ACTION OF THE BOARD – Laid over to September 26, 2006, at 1:30 P.M., for deferred decision.

338-05-BZ
APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application November 25, 2005 – Special Permit Z.R. §73-622 to permit the proposed enlargement of an existing single family home which creates non-compliances with respect to open space and floor area, Z.R. §23-141, less than the required side yards, Z.R. § 23-461 and less than the required rear yard, Z.R. §23-47.
PREMISES AFFECTED – 2224 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7374, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Robin Schan and Marilyn Schan.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

16-06-BZ
APPLICANT – Eric Palatnik, P.C., for Simon Blitz, owner.
SUBJECT – Application January 27, 2006 – Special Permit Z.R. § 73-622 to permit the proposed enlargement of a one family home, which creates non-compliances with respect to open space and floor area (Z.R. § 23-141), side yards (Z.R. § 23-461) and rear yard (Z.R. § 23-47).
PREMISES AFFECTED – 2253 East 14th Street, west side, between Avenue V and Gravesend Neck Road, Block 7375, Lot 50, Borough of Brooklyn.
COMMUNITY BOARD #15BK
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 October 17, 2006, at 1:30 P.M., for decision, hearing closed.

344-05-BZ
APPLICANT – Rothkrug Rothkrug & Spector, for Cornerstore Residence, LLC, owner.
SUBJECT – Application December 2, 2006 – Variance pursuant to Z.R. §72-21 to permit the construction of a two-family dwelling that does not permit one of the two front yards required for a corner lot. The premise is located in an R4 zoning district. The proposal requests a waiver of Z.R. Section 23-45 relating to the front yard.
PREMISES AFFECTED – 109-70 153rd Street, a/k/a 150-09 Brinkerhoff Avenue, northwest corner of 153rd Street and 110th Avenue, Block 12142, Lot 21, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

29-06-BZ
APPLICANT– Sheldon Lobel, P.C., for lliva Honovich, owner.
SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR § 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§ 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.
PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.
COMMUNITY BOARD # 15BK
APPEARANCES –
For Applicant: Irvine Minkin, Iliva Honovich, Tracy Boanisler, Elya Gontwacher and Lenny Wolf.

ACTION OF THE BOARD – Laid over to October 24, 2006, at 1:30 P.M., for continued hearing.

49-06-BZ
APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.
SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story

structure consisting of approximately 2,600 SF will be demolished.
PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 31, 2006, at 1:30 P.M., for continued hearing.

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 decreeses 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.

ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.