BULLETIN

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DIRECTORY

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CONTENTS

DOCKETS

MINUTES of Regular Meetings,
Tuesday, October 17, 2006

DOCKETS

New Case Filed Up to October 17, 2006

265-06-BZ
141-48 33rd Avenue, Located on the south side of 33rd Avenue between Parsons Boulevard and Union Street., Block 4981, Lot 37, Borough of **Queens, Community Board: 7**. Under 72-21-To permit multi-family residential accessory use on the R2 portion of a zoning lot split by district boundaries. Such access will permit the development of a community facility and multi-family residential building on the landlocked R6 portion

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266-06-BZ
4 East 3rd Street, Situated on the south side of East 3rd Street, 0 feet east of the corner formed by the intersection of The Bowery and East 3rd Street., Block 458, Lot 6, Borough of **Manhattan, Community Board: 3**. (SPECIAL PERMIT) 73-52-To extend the C6-1 use and bulk regulations 25 feet into the adjacent R7-2 district and to apply the C6-1 use & bulk regulations to the additional 25 feet of the zoning lot.

267-06-BZ
148-29 Cross Island Parkway, Southeast corner of a block bounded by Cross Island Parkway to the south and southwest, 149th Street to the east 148th Street to the west and 12th Avenue to the north., Block 4486, Lot 34,35, Borough of **Queens, Community Board: 7**. Under 72-21-To permit a two-story professional office building.

268-06-BZ
80-35 Pitkin Avenue, Approximately 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of **Queens, Community Board: 10**. (SPECIAL PERMIT) 73-30 and 22-21-For a non-accessory radio tower, which is a public utility wireless communications facility and will consist of an 80-foot stealth flagpole, together with antennas mounted therin and related equipment at the base thereof.

269-06-BZ
125 Greaves Lane, Between Timber Ridge Drive on the east and Greaves Lane on the west., Block 4645, Lot 425,
Borough of **Staten Island, Community Board: 3**. Under 72-21-To convert 11,000 square fet of a vacant space.

270-06-A
148 East 63 Street, 120 feet from the south east corner of the Intersection of Lexington Avenue and East 63rd Street., Block 1397, Lot 48, Borough of **Manhattan, Community Board: 8**. Revocation of Permits/Certificate of Occupancy-For office (hotel doctor); office (hotel manger); two (2) furnished rooms; thre (3) furnished rooms, at the base basement, 1st story , 2nd story & 3rd story, respectively.

271-06-BZY
1504 Richmond Road, South side Richmond Road; 71.72" northeast of Cromwell Avenue., Block 3229, Lot 1 (tent 5), Borough of **Staten Island, Community Board: 2**. Extension of Time/Certificate of Occupancy.

272-06-BZ
37-11 35th Avenue, 35th Avenue between 37th & 38th Streets., Block 645, Lot 1, Borough of **Queens, Community Board: 1**. (SPECIAL PERMIT) 73-36-To allow a physical culture establishment.

273-06-A
113 Beach 221st Street, Eastside Beach 221st Street 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board:** . General City Law Section36, Article 3-Proposed enlargement of existing single family dwelling.

274-06-BZ
116-07 132nd Street, Vacant triangular lot with Lincoln Street to the east, 132nd to the west and 116 Avenue to the north., Block 11688, Lot 1, Borough of **Queens, Community Board: 10**. Under 72-21-To permit the construction of a two-story single family dwelling.

275-06-BZ
408-414 West 13th Street, An irregularly-shaped through lot with its northern lot line on the south side of West 13th Street, 124.16 feet west of the corner formed by the intersection of Ninth Avenue and West 13th Street., Block 645, Lot 33,35,51, Borough of **Manhattan, Community Board: 2**. Under 72-21-For rear yards to facilitate development of a M1-5 zoned commercial condominum building.

276-06-A
8 & 12 Reynolds Street, South side of Reynolds Street 100' West of Saint Mary's Avenue., Block 2989, Lot 30,28, Borough of **Staten Island, Community Board:** . Appeals-

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277-06-A
27 Roosevelt Walk, East side Roosevelt Walk 193.04 south of West End Avenue, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. Appeal-

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278-06-BZ
871 Bergen Street, Between Classon and Franklin Avenues, Block 1142, Lot 92, Borough of **Brooklyn, Community Board: 8**. Under 72-21-To allow the development of a 5 story residential project.

279-06-BZ
144-29 South Road, Corner formed by the southeast side of South Road and Inwood Street., Block 10045, Lot 18, Borough of **Queens, Community Board: 12**. Under 72-21-To permit the construction of a two story family residence on a corner lot.

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

NOVEMBER 14, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 14, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

717-60-BZ
APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.
SUBJECT – Application September 25, 2006 - Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.
PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #1SI

466-89-BZ
APPLICANT – Eric Palatnik, P.C., for Frank R. Bell Funeral Home Inc., owner.
SUBJECT – Application September 7, 2006 - Amendment to a previously granted Variance (§72-21) for the enlargement of an existing funeral home (UG7) to allow the increase of 1,250 square feet to the existing structure in an R6 zoning district.
PREMISES AFFECTED – 526, 528 an 536 Sterling Place, aka 764 Classon Avenue, southwest corner of Sterling Place and Classon Avenue, Block 1174, Lots 32, 33, 35, Borough of Brooklyn.
COMMUNITY BOARD #8BK

70-97-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Tenth City, LLC, owner; New York Sports Club, lessee.
SUBJECT – Application September 11, 2006 - Extension of Term of a Special Permit (73-36) to allow a Physical Culture Establishment (New York Sports Club) in a C6-6 & Cl-4.5(MID) zoning district which expired on November 1, 2006 and an amendment to legalize the increase of 1,500 square feet on the second floor.
PREMISES AFFECTED – 576 Lexington Avenue, northeast corner of Lexington Avenue and East 51st Street, Block 1306, Lot 23, Borough of Manhattan.
COMMUNITY BOARD #6M

330-98-BZ
APPLICANT – Sheldon Lobel, P.C., for Paula Katz, owner; Anthony Gaudio, lessee.
SUBJECT –Application May 25, 2006 - requesting an extension of term/waiver and an amendment of a Physical Cultural Establishment located within a C1-6A zoning district in the Special Transit Land Use District, commencing on February 16, 1995 and expiring on February 16, 2005. The amendment sought includes a change in operating control and proposed minor physical alterations to the establishment.
PREMISES AFFECTED – 242 East 14th Street, south side of 14th Street, Block 469, Lot 30, Borough of Manhattan.
COMMUNITY BOARD #2M

APPEALS CALENDAR

331-05-A
APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Rock Development Corp., owner.
SUBJECT – Application November 17, 2005 - to permit the construction of the one family dwelling within the bed of mapped street, 153rd Place, contrary to General City Law Section 35. Premises is located in an R3-1 Zoning District.
PREMISES AFFECTED – 15-59 Clintonville Street a/k/a 15-45 153rd Place, east side of Clintonville Street, bed of mapped 153rd Place, Block 4722, Lot (tentative 19), Borough of Queens.
COMMUNITY BOARD #7Q

182-06-A thru 211-06-A
APPLICANT – Stadtmauer Bailkin, LLP, for Beachfront Community, LLC, owner.
SUBJECT – Application August 22, 2006 -An appeals seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. Premises is located in an R4-A Zoning district.
PREMISES AFFECTED – Beach 5th Street, Beach 6th Street and SeaGirt Avenue, bound of Seagrit Avenue to the north, Beach 5th Street to the east, Beach 6th Street to the west Reynolds Channel to the south, Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67 and 68; Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67 and 69 Borough of Queens.
COMMUNITY BOARD #14Q

CALENDAR

NOVEMBER 14, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 14, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

159-05-BZ
APPLICANT– Vito J. Fossella, P.E., for Antonio Ciccotto, owner.
SUBJECT – Application July 7, 2006 - Variance under ZR §72-21 to allow a three (3) story mixed-use building containing residential use on the upper floors and retail use (UG 6) on the ground and cellar levels on a site zoned R3X and R3X/C2-1; contrary to ZR §22-00.
PREMISES AFFECTED – 880 Anadale Road, located on the west of the corner formed by the intersection of Annadale Road and South Railroad Avenue, Block 6249, Lot 436T, Borough of Staten Island.
COMMUNITY BOARD #3SI

359-05-BZ
APPLICANT– Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application December 15, 2006 - Special Permit under Z.R.§ 73-211- to allow an existing gasoline service station with accessory convenience store in an R5/C2-2 zoning district.
PREMISES AFFECTED – 1927-1933 Flatbush Avenue, northeast corner of Flatbush Avenue and Kings Highway, Block 7819, Lots 20 & 25, Borough of Brooklyn.
COMMUNITY BOARD #18BK

130-06-BZ
APPLICANT – Anderson Kill & Olick, P.C., for Amsterdam Nursing Home Corp., owner.
SUBJECT – Application June 22, 2006 – Variance pursuant to Z.R. §72-21 to permit a one-story addition in the rear yard of an existing nursing home. The Premise is located in R8 and R8/C1-4 zoning districts. The proposal is contrary to Z.R. Section 24-33(b)(3).The rear yard proposed for the addition is currently vacant.
PREMISES AFFECTED – 1060 Amsterdam Avenue, West side of Amsterdam Avenue between 112th and 113th Streets, Block 1884, Lots 29, 36, Borough of Manhattan.
COMMUNITY BOARD #9M

252-06-BZ
APPLICANT – Randolph Croxton, for Mount Hope Community Center, owner.
SUBJECT – Application September 15, 2006 - Variance pursuant to Z.R. 72-21 to permit the construction of a four-story Use Group 4 community center facility. The Premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. 24-36 and 24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. 24-33 (b) paragraph (3)). A waiver of 24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.
PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.
COMMUNITY BOARD #5BX

258-06-BZ
APPLICANT– Anderson Kill & Olick, P.E., for Our Lady of the Snows Church, owner.
SUBJECT – Application September 20, 2006 – Variance pursuant to Z.R. 72-21 to permit the proposed one-story church sanctuary which would be built on a portion of the site currently occupied by a parking lot. The applicant proposes to move out of its existing sanctuary on the same site, which was originally built a as a gymnasium/auditorium for the parochial school. The Premises is located in an R2 zoning district. The proposal is seeking waivers of Z.R. 24-111 and 23-141 with respect to the proposed one-story addition (additional floor area) exceeding the permitted community facility floor area in an R2 zoning district.
PREMISES AFFECTED – 79-48 259th Street, 258-15 80th Avenue, 79-33 258th Street, entire block bounded by Union Turnpike, 79th Avenue, 259th Street, 80th Avenue, 258th Street, Block 8695, Lots 1, 60, Borough of Queens.
COMMUNITY BOARD #13Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, OCTOBER 17, 2006
10:00 A.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, July 25 & 26, 2006 as printed in the bulletin of August 4, 2006, Volume 91, No. 30. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

802-48-BZ
APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Sheldon Rodbell 1993 Trust #2, owner; Beach Channel Island Drive, lessee.
SUBJECT – Application November 2, 2005 – Pursuant to ZR §11-411for the Extension of Term of a UG16 gasoline service station with automotive repair for a term of ten years, to expire in June 24, 2015. This application also purposes to legalize the conversion of two service bays to an accessory convenience store, maintain one service bay for minor auto repairs and the continuation of gasoline service sales. The premise is located in an R5 zoning district.
PREMISES AFFECTED – 13-46 Beach Channel Dr., a/k/a 2118 Dix Place, Northeast corner of Beach Channel Drive and Dix Place, Block 15527, Lot 1, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of the previously granted variance, which permitted a gasoline service station and which expired on June 24, 2005, and an amendment to legalize an accessory convenience store; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, with a continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, the site is located on the northeast corner of Beach Channel Drive and Dix Place; and

WHEREAS, the site is located within an R5 zoning district, and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 26, 1949 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing auto laundry to an automobile repair shop, on a site that also included an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; it was most recently extended on November 14, 1995 for a term of ten years, to expire on June 24, 2005; and

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

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

WHEREAS, the Board notes that in January of 2001, DOB approved an application permitting an interior alteration of the building, which included the conversion of the repair shop to an accessory convenience store; and

WHEREAS, the applicant seeks to formalize the conversion of the repair shop to an accessory convenience store; and

WHEREAS, at hearing, the Board asked the applicant if the signage was compliant; and

WHEREAS, the applicant provided a sign analysis and photographs indicating that the signage was compliant; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

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

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on April 26, 1949, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 24, 2005, to expire on June 24, 2015 and to permit an accessory convenience store *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'June 27, 2006'–(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 24, 2015;

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

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

THAT DOB shall review all signage for compliance with C1-1 zoning district regulations;

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

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

related to the relief granted."
(DOB Application No. 400522555)

Adopted by the Board of Standards and Appeals, October 17, 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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0

THE RESOLUTION:

WHEREAS, this application is a request for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term, and an amendment to a previously granted variance, to permit the sale of used cars; 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 decision on October 17, 2006; and

WHEREAS, Community Board, 7, Queens, recommends approval of this application on the condition that advertising signage be limited, the number of cars for sale be limited to four at one time, and that vehicles be contained within property lines; and

WHEREAS, the site is located on the north side of the corner formed by Clintonville Street, 21st Avenue, and Willets Point Boulevard; and

WHEREAS, the site is located partially within an R3-1 zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 1958 when, under the subject calendar number, the Board granted a variance for the maintenance and construction of the gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on October 29, 1996, the grant was extended for a term of ten years, to expire on October 7, 2005; and

WHEREAS, the applicant now requests an additional ten-year term; and

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

WHEREAS, additionally, the applicant proposes to add the sale of used cars, limited to four at any time; and

WHEREAS, the applicant represents that there would not be any freestanding signs or banners associated with the sale of cars at the site; and

WHEREAS, at hearing the Board asked the applicant to modify the parking layout in order to improve traffic circulation; and

WHEREAS, the applicant submitted revised plans that indicate the removal of two parking spaces; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit an alteration to a site subject to a previously granted variance; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on October 7, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from October 7, 2005 to expire on October 7, 2015, to permit the sale of used cars at the site, and to permit modifications to the previously approved plans *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received April 25, 2006'–(1) sheet and 'October 10, 2006'-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2015;

THAT the number of cars for sale shall be limited to four;

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

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

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

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

(DOB Application No. 402234079)

Adopted by the Board of Standards and Appeals, October 17, 2006.

229-84-BZ

APPLICANT – Cozen O'Connor by Barbara Hair, for High

Definition Realty LLC, owner. Bally Total Fitness Corporation, lessee.
SUBJECT – Application June 30, 2006 – Extension of Term/Waiver for a previously approved Physical Culture Establishment, located in an M1-1 zoning district, which was granted under section 73-36 of the zoning resolution and expired on November 27, 2004.
PREMISES AFFECTED – 75-28 Queens Boulevard, southside between Kneeland and Jacobus Streets. Block 2450, Lot 1, Borough of Queens.
COMMUNITY BOARD #4Q
APPEARANCES –
For Applicant: Barbara Hair.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on November 27, 2004; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

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

WHEREAS, the subject premises is located on the south side of Queens Boulevard, between Kneeland and Jacobus Streets; and

WHEREAS, the site is occupied by a one-story commercial building, located within an M1-1 zoning district; and

WHEREAS, the PCE is operated as a Bally's Fitness; and

WHEREAS, on November 27, 1984, the Board granted a special permit pursuant to ZR §73-36, to permit the operation of a PCE in the subject building; and

WHEREAS, on August 8, 1995, the Board granted a ten-year extension of term which expired on November 27, 2004; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 27, 1984, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received June 30, 2006'–(3) sheets; and *on condition*:

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

THAT this grant shall be limited to a term of ten years from November 27, 2004, expiring November 27, 2014;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 402217640)

Adopted by the Board of Standards and Appeals, October 17, 2006.

144-89-BZ, Vol. III
APPLICANT – Law Office of Howard Goldman, LLP, for 93rd Street Associates LLC, owner.
SUBJECT - This application is to reopen and to Extend the Time to Complete Construction on a 10 story residential building with retail on the ground floor which expired on December 15, 2003 and a Waiver of the Rules of Practice and Procedure. The premise is located in a C2-8(TA) zoning district.
PREMISES AFFECTED – 1800 Second Avenue, between 93rd and 94th Street, Block 1556, Lot 1, Borough of Manhattan**.**
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Chris Wright.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment to permit modifications to the plans, and an extension of time to complete construction of an 11-story residential building with retail use on the first floor, which expired on December 15, 2003; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City*

Record, to continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

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

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

WHEREAS, the site is located in a C2-8A zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject zoning lot is located on the southeast corner of Second Avenue and E. 93rd Street, with a depth of 75 feet and a width of 25 feet; and

WHEREAS, the zoning lot is currently vacant; and

WHEREAS, on August 14, 1990, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in a C2-8 (TA) zoning district the construction of a ten-story residential building with ground floor retail space; and

WHEREAS, the initial proposal was for a ten-story building with an FAR of 9.75, 27 units, a height of 96 feet, and a bulkhead height of 110 feet; and

WHEREAS, one of the conditions of the grant was that substantial construction be completed in accordance with ZR § 72-23, which requires the completion of construction within the statutorily prescribed time set forth in that provision; and

WHEREAS, subsequently, on four occasions, the grant was amended, to allow for an extension of time to complete construction; and

WHEREAS, most recently, an extension was granted on March 6, 2001, to permit a three-year extension of term from December 15, 2000 to expire on December 15, 2003; and

WHEREAS, additionally, in 2002, in response to a request from the prior owner, the Board issued a letter of substantial compliance approving certain minor modifications to the approved plans; the revised proposal provided for a ten-story building with an FAR of 9.9, 27 units, a height of 96'-6", and a bulkhead height of 115 feet; and

WHEREAS, the applicant represents that the current owner purchased the site in 2005 before any work had commenced at the site; and

WHEREAS, the applicant represents that the current owner has a foundation permit and is prepared to commence work; and

WHEREAS, at hearing, the Board asked the applicant to provide documentation that funding has been secured for the development; and

WHEREAS, the applicant submitted details about the secured funding; and

WHEREAS, accordingly, the Board finds that it is appropriate to grant an extension of time to complete construction; and

WHEREAS, additionally, the applicant proposes to modify the plans to reflect a number of design changes including: 1) an increase in the overall height from 96'-6" to 114'-0"; 2) an increase in the bulkhead height from 115 feet to 132 feet; 3) an increase in floor-to-floor heights from 9'-5" to 10'-0"; 4) a reduction in the number of apartments from 27 to nine; and 5) the addition of an 11th floor; and

WHEREAS, specifically, the new plan proposes to set the building back at 103 feet, above the tenth floor and to offer one apartment per floor, with a duplex on the tenth and 11th floors; and

WHEREAS, the proposed FAR of 9.9 remains unchanged from the 2002 revision and is permitted by zoning district regulations; and

WHEREAS, the applicant represents that the new design complies with the requirements of the Quality Housing (QH) program and allows the building to offer modernized floor plans and services; and

WHEREAS, the Board notes that the waiver for lot area per room is no longer required due to a ZR text change; and

WHEREAS, further, the Board notes that the implementation of QH standards include: landscaping, increased dwelling unit size and the inclusion of double-glazed windows, individual laundry units, and recreation space on the roof; and

WHEREAS, because of the increase in height, the Board asked the applicant to provide information about the current character of the surrounding area; and

WHEREAS, the applicant provided a land use map and photographs of the surrounding area; and

WHEREAS, the Board has reviewed these materials and notes that buildings with significantly taller heights occupy the other three corners of the E. 93rd Street and Second Avenue intersection; and

WHEREAS, specifically, there are 17-story, 32-sory, and 45-story buildings on the other corners and several buildings along Second Avenue that range in height from 20 to 40 stories; and

WHEREAS, accordingly, the Board finds that the proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, said resolution having been adopted on August 14, 1990, so that as amended this portion of the resolution shall read: "to permit a four-year extension of time to complete substantial construction from the date of this grant, to expire on October 17, 2010, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received October 2, 2006'– (8) sheets; and *on further condition*:

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. 104446805)

Adopted by the Board of Standards and Appeals, October 17, 2006.

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: Chris Wright
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, which permitted an enlargement of an existing six-story school; 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 decision on October 17, 2006; and

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

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

WHEREAS, the subject zoning lot is located on the northwest corner of East End Avenue and E. 84th Street with 223'-0" of frontage on East End Avenue and 102'-2" of frontage on E. 84th Street; and

WHEREAS, the site is located in an R8B/R10A zoning district with the 154'-6" mid-block portion of the site along East 84th Street zoned R8B, and the portion of the site at the corner of E. 84th Street and East End Avenue - 68'-6" along E. 84th Street and 102'-2" along East End Avenue - zoned R10A; and

WHEREAS, the site is occupied by a six-story school building; and

WHEREAS, this application was brought on behalf of the Chapin School (the "School"); and

WHEREAS, on December 1, 1987, under BSA Cal. No. 498-87-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R8B/R10 zoning district, an enlargement of an existing six-story school to allow for the construction of a new gymnasium; and

WHEREAS, the 1987 proposal, which was built on a portion of the site split between the two zoning districts, required waivers for lot coverage, rear yard, and sky exposure plane within the R8B zoning district; and

WHEREAS, subsequent to the grant, the site was rezoned to R8B/R10A; and

WHEREAS, on March 26, 1996, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit an enlargement of the School to accommodate a new library, gymnasium, and performing arts facility; and

WHEREAS, the 1996 proposal, which was built within a portion of the site split between the two zoning districts, required waivers for lot coverage, street wall, height, and setback; and

WHEREAS, the applicant now proposes to add three floors above the east wing of the School, located at the corner of East End Avenue and E. 84th Street in the portion of the lot wholly within the R10A zoning district; and

WHEREAS, the applicant represents that this enlargement will help accommodate the School's science program and will include: classrooms, labs, office space, and a new visual arts center; and

WHEREAS, the applicant represents that the School determined that the need for the expansion of the science program was necessary after an evaluation by the New York State Association of Independent Schools; and

WHEREAS, additionally, the applicant represents that the proposed enlargement is designed to better serve the existing student body and will not result in an increase in enrollment or faculty; and

WHEREAS, the Board notes that the proposed enlargement, entirely within the R10A zoning district, is within the bulk parameters permitted within the zoning district and that no new waivers or modifications to existing waivers are required; and

WHEREAS, specifically, as to floor area, the enlargement will add approximately 21,000 sq. ft. of floor area to the existing 49,041 sq. ft. of floor area currently within the R10A zoning district (there are 60,274 sq. ft. of floor area located with the R8B zoning district) and will increase the FAR within the R10A portion of the site from 4.8 to 6.9 (the R10A zoning district permits a maximum FAR of 10.0); and

WHEREAS, as to height, with the proposed enlargement, the street wall height will be increased from 83 feet to 117 feet (the R10A zoning district permits a maximum street wall of 150 feet); and

WHEREAS, the applicant represents that because the greenhouse will be relocated within the enlarged building, the waivers for height and setback required at its current location will be eliminated; and

WHEREAS, additionally, the applicant represents that the lot coverage, which did not comply with the prior R10 zoning district regulations, complies with R10A zoning district regulations, therefore that waiver is also no longer required; and

WHEREAS, accordingly, the Board finds that the

proposed amendments are appropriate.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on March 26, 1996, so that as amended this portion of the resolution shall read: "to permit the proposed three-story enlargement to the existing school *on condition* that all work and site conditions shall comply with drawings marked 'Received July 21, 2006'– (16) sheets; and *on further condition*:

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. 104484880)

Adopted by the Board of Standards and Appeals, October 17, 2006.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to eliminate the term of the special permit, which allows the reduction in the number of required parking spaces for an existing counseling facility; 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 decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of the private fee owner who leases the property to Vocational and Educational Services for Individuals with Disabilities (VESID), a state agency; and

WHEREAS, the site is located on the west side of Zerega Avenue, between Ellis and Gleason Avenues, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a one-story with cellar building, with 25 attended accessory parking spaces; and

WHEREAS, on July 1, 1997, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-44, authorizing a reduction in the number of required parking spaces from 40 to 25 for VESID, a vocational and educational counseling facility for individuals with disabilities operated by the State of New York (a Use Group 6 use in Parking Requirement Category B1); and

WHEREAS, said grant was for a period of ten years to expire on July 1, 2007; and

WHEREAS, the applicant requests that the term of the special permit be eliminated; and

WHEREAS, at hearing, the Board asked the applicant if there had been any changes to the parking or the use of the site; and

WHEREAS, the applicant responded that there had not been any changes since the prior approval; and

WHEREAS, further, the applicant represents that the State intends to continue to lease the premises for occupancy by VESID or a comparable use; and

WHEREAS, in support of this assertion, the applicant submitted a renewal letter and a letter of intent from the lessor of the premises indicating an intent to renew the lease to the State of New York through February 28, 2017; and

WHEREAS, based upon the above, the Board finds that the applicant's request to eliminate the term is appropriate, so long as the applicant complies with all relevant conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on July 1, 1997, so that, as amended, this portion of the resolution shall read: "to permit the elimination of a term for the special permit, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received July 15, 2006'–(1) sheet; and *on further condition*:

THAT there shall be no change in the ownership, operating control, or use of the subject premises without the prior approval of the Board;

THAT no certificate of occupancy shall be issued if the use is changed to a use listed in Parking Requirement Category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB App. No. 201055188)

Adopted by the Board of Standards and Appeals, October 17, 2006.

111-01-BZ
APPLICANT – Eric Palatnik, P.C., for George Marinello, owner; Wendy's Restaurant, lessee.
SUBJECT – Application January 12, 2006 – Pursuant to Z.R. §§72-21 and 72-22 for the extension of term for ten years for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which one-year term expired February 1, 2006. An amendment is also proposed to extend the hours of operation of the accessory drive-thru facility to operate until 4 a.m. daily. The premise is located in a C1-2/R-5 zoning district.
PREMISES AFFECTED – 9001 Ditmas Avenue, between 91st Street and Remsen Avenue, Block 8108, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD#17BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on February 1, 2006, as well as an amendment to extend the hours of operation; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record,* with continued hearings on June 6, 2006, July 18, 2006, August 22, 2006, and September 26, 2006, and then to decision on October 17, 2006; and

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

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, during the hearing process, neighbors of the site provided testimony in opposition to the approval, citing concerns about noise at the drive-through, the hours of operation of the parking lot, restaurant customers entering neighboring property, the garbage removal schedule, landscaping, property damage, and the presence of debris and animal waste; these concerns are addressed below; and

WHEREAS, the site is located on the west side of Ditmas Avenue between East 91st Street and Remsen Avenue, within a C1-2 (R5) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a Wendy's fast food restaurant), with a drive-through facility and 25 accessory parking spaces; and

WHEREAS, on August 14, 2001, under the subject calendar number, the Board granted a special permit authorizing the operation of this establishment with an accessory drive-through facility; and

WHEREAS, under the original grant, the approved hours of operation for the drive-through facility were from 10:00 a.m. to 11:00 p.m., Sunday through Thursday, and 10:00 a.m. to 12:00 a.m., Friday and Saturday; and

WHEREAS, on February 1, 2005, the grant was amended to allow for an extension of the hours of operation for the drive-through from 10:00 a.m. to 1:00 a.m., daily; this grant was for a term of one year, to expire on February 1, 2006; and

WHEREAS, in the instant application, in addition to an extension of term, the applicant requests Board approval of an extension of the hours of operation of the drive-through facility to 2:00 a.m., Sunday through Wednesday, and to 3:00 a.m., Thursday through Saturday; and

WHEREAS, the applicant initially proposed to extend the hours of the drive-through until 4:00 a.m., daily, but revised the application; and

WHEREAS, at hearing, the Board asked the applicant why the additional hours of operation where needed; and

WHEREAS, the applicant states that the restaurant needs the additional hours of operation in order to compete with nearby fast food restaurants; and

WHEREAS, the applicant submitted financial information in support of this assertion;

WHEREAS, at hearing, the Board asked the applicant to address certain neighbors' complaints about: 1) noise at the drive-through, 2) the hours of operation of the parking lot, 3) restaurant customers entering neighboring property, 4) the garbage removal schedule, 5) landscaping, 6) property damage, and 7) the presence of debris and animal waste; and

WHEREAS, as to the noise at the site, at the Board's suggestion, the applicant posted a sign visible from the drive-through lane that reminds patrons to lower their radio volume; and

WHEREAS, as to the hours of operation of the parking lot, a condition of the 2005 grant was that at 11:00 p.m. when the dining room closes each night, restaurant staff would chain off the parking areas, as specified on the BSA-approved plans, so that no vehicle access to these areas is possible; and

WHEREAS, in response to complaints that the parking area has not been closed in accordance with the noted condition, the Board directed the applicant to chain off the lot each night per the condition, and post a sign that reads: "This area of the parking lot closes at 11:00 p.m."; and

WHEREAS, additionally, the applicant represents that a locked chain will be pulled across the entrance to the parking

lot by 11:00 p.m. each night; and

WHEREAS, the applicant submitted photographs of the above-noted signs and lock installed at the site; and

WHEREAS, as to restaurant customers entering neighboring properties, certain neighbors requested that trees at the rear of the site be removed so that visitors to the site would be discouraged from entering the neighboring property along 91st Street; and

WHEREAS, at the neighbors' suggestion, the applicant removed the landscaping at the rear of the property, along the lot line shared with residences in order to discourage the entering of neighboring property; and

WHEREAS, as to the garbage removal schedule, the Board asked the applicant to limit the hours of garbage removal so as to lessen the impact of after hours pick-up on the residential neighbors; and

WHEREAS, at the Board's suggestion, the applicant agreed to limit the hours of garbage removal to between 6:00 a.m. and 1:00 a.m.; and

WHEREAS, as to landscaping, at the Board's suggestion, the applicant cut back shrubbery to ensure that it remained within the boundaries of the site; and

WHEREAS, as to property damage, certain neighbors complained of water damage to a neighboring yard and front stoop caused by a sprinkler at the site; and

WHEREAS, at the Board's suggestion, the applicant corrected the sprinkler so that it would only spray on the subject premises; and

WHEREAS, the applicant also repaired the stoop to the neighbor's satisfaction; and

WHEREAS, as to the presence of debris and animal waste along the perimeter of the site, the applicant agreed to maintain the site in better condition and to promptly remove such debris and waste from the site; and

WHEREAS, lastly, the Board suggested that in order for the applicant to better respond to any problems at the site, a sign providing contact information for the restaurant manager be posted in a prominent location at the site; and

WHEREAS, the applicant submitted photographs of a sign reading "Any comments or suggestions regarding the operation of this facility should be directed to the store manager" with the manager's contact information listed; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on August 14, 2001, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional five years from February 1, 2006, and to permit the extension of hours of operation; *on condition* that all work and site conditions shall comply with drawings marked 'Received September 12, 2006'– (1) sheet and 'August 8, 2006'-(4) sheets; and *on further condition*:

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

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on February 1, 2011;

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

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

THAT all garbage removal shall be performed between the hours of 6:00 a.m. and 1:00 a.m.;

THAT the hours of operation for the drive-through shall be from 10:00 a.m. to 2:00 a.m., Sunday through Wednesday, and 10:00 a.m. to 3:00 a.m., Thursday through Saturday;

THAT the parking lot shall be closed and chained off at 11:00 p.m. each night;

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

THAT signs reading: "Please lower your radio as a courtesy to our neighbors"; "This area of the parking lot closes at 11:00 p.m."; and "Any comments or suggestions regarding the operation of this facility should be directed to the store manager" shall be prominently posted at the site in accordance with 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 Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 301128232)

Adopted by the Board of Standards and Appeals, October 17, 2006.

866-49-BZ, Vol. III

APPLICANT – Carl. A. Sulfaro, Esq., for 2912 Realty, LLC, owner.

SUBJECT – Application June 12, 2006 – Pursuant to ZR 11-411 for an Extension of Term for ten years for a gasoline service station (Shell Station) which expired on October 7, 2006, a Waiver of the Rules of Practice and Procedure for filing subsequent to the expiration of term and an Amendment to legalize the change in signage, new storefront and replacement of the wrought iron fencing with white vinyl fencing. The premise is located in an R3-X zoning district.

PREMISES AFFECTED – 200-01/07 47th Avenue, northeast corner of 47th Avenue and Francis Lewis Boulevard, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –
For Applicant: Carl A. Sulfaro.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

413-50-BZ, Vol. II
APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.
SUBJECT – Application October 12, 2005 – Pursuant to ZR §11-411 and §11-412 for an Extension of Term of a Gasoline Service Station-UG 16 (BP North America) for ten years which expired on November 18, 2005. This instant application is also for an Amendment to legalize modifications to the previously approved signage on site.
PREMISES AFFECTED – 691/703 East 149th Street, northwest corner of Jackson Avenue, Block 2623, Lot 140, Borough of The Bronx.
COMMUNITY BOARD #15BX
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

1888-61-BZ
APPLICANT – Alfonso Duarte, for Ali Amanolahi, owner.
SUBJECT – Application June 21, 2005 – Pursuant to Z.R. §11-412 for an Amendment to an eating and drinking establishment and catering hall for the further increase in floor area and the to legalize the existing increase in floor area, the separate entrance to the catering hall and the drive thru at the front entrance. The premise is located in an R3-2 zoning district.
PREMISES AFFECTED – 93-10 23rd Avenue, southwest corner of 94th Street, Block 1087, Lot 1, Elmhurst, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Alfonso Duarte, P.E.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

441-65-BZ
APPLICANT – Sheldon Lobel, P.C. for Eleanor Barrett c/o JP Morgan Chase, owner; Hess Amerada Corporation, lessee.
SUBJECT – Application March 20, 2006 – Pursuant to ZR 73-11 & 73-211 an Amendment to a previously granted special permit for the redevelopment of a gasoline service station, to construct an accessory convenience store (Hess Express), to construct a new canopy and six pump islands with MPD dispensers and one diesel fuel dispenser. The premise is located in C2-1/R3-2 zoning district.
PREMISES AFFECTED – 2488 Hylan Boulevard, located on the east side of Hylan Boulevard between Jacques Avenue and New Dorp Lane, Block 3900, Lot 12, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Richard Lobel, Marc Pilotta and Erwin Andres.
For Administration: Anthony Scaduto, Fire Department

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10:00 A.M., for continued hearing.

459-73-BZ
APPLICANT – Sheldon Lobel, P.C., for Joseph Angelone, owner.
SUBJECT –Application August 21, 2006 - Extension of Term of a special permit, granted pursuant to section 73-50 of the zoning resolution, allowing a waiver of the rear yard requirement for a lot located along district boundaries. The premises is located within a C8-1 zoning district.
PREMISES AFFECTED – 2424-48 Flatbush Avenue, southwest corner of the intersection of Flatbush Avenue and Avenue T, Block 8542, Lots 41 and 46, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

1289-80-BZ
APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for Fred Straus, owner; Bally Total Fitness, lessee.
SUBJECT –Application August 18, 2006 - Extension of Term of a variance allowing the operation of a Physical Culture establishment in a C1-3/R6 zoning district.
PREMISES AFFECTED – 298 West 231st Street, southwest corner of Tibbett Avenue, Block 5711, Lot 29, Borough of The Bronx.
COMMUNITY BOARD #8BX

APPEARANCES –
For Applicant: Barbara Hair.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

938-82-BZ
APPLICANT – Eric Palatnik, P.C., for A. Brothers Realty, Inc., owner; Eugene Khavenson, lessee.
SUBJECT – Application August 4, 2006 - to re-open the previous BSA resolution granted on May 17, 1983 to extend the term of the variance for twenty (20) years. The application also seeks a waiver of the BSA Rules of Practice and Procedure as the subject renewal request is beyond the permitted filing period. Prior grant allowed a one-story commercial office building (UG 6) in an R4 district; contrary to ZR Section 22-10.
PREMISES AFFECTED – 2470 East 16th Street, northwest corner of Avenue Y, block 7417, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

331-98-BZ
APPLICANT – Sheldon Lobel, P.C., for Sean Porter, owner.
SUBJECT – Application April 20, 2006 – Application seeks an extension of term for a special permit under section 73-244 of the zoning resolution which permitted the operation of an eating and drinking establishment with entertainment and dancing with a capacity of more than 200 persons at the premises. In addition the application seeks a waiver of the Board's Rules and Procedure due the expiration of the term on April 20, 2005. The site is located in a C2-3/R6 zoning district.
PREMISES AFFECTED – 1426-1428 Fulton Street, Southern side of Fulton Street between Brooklyn and Kingston Avenues, Block 1863, Lot 9, 10, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

332-05-A/333-05-A
APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for LMC Custom Homes, owner.
SUBJECT – Application November 17, 2005 – Application to permit the construction of two one-family dwellings within the bed of a mapped street (Enfield Place). Contrary to General City Law Section 35. Premises is located in an R4 Zoning district.
PREMISES AFFECTED – 72 & 74 Summit Avenue, Block 951, Lot p/o 19 (tent 25 and 27), Borough of Staten Island
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Appeals granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 21, 2005, acting on Department of Buildings Application Nos. 500779357 and 500779366, reads in pertinent part:

> "The proposed building is in the bed of a mapped street and contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required. Proposed building is mapped within R-2 Zoning district."; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in the *City Record*, with a continued hearing on September 12, 2006, and then to decision on October 17, 2006; and

WHEREAS, the subject site is located in R2 and R3-2 zoning districts within the Special Natural Area District (NA-1); and

WHEREAS, the applicant proposes to build a total of five single-family homes at the site, with two homes parallel to and three perpendicular to the mapped Enfield Place; and

WHEREAS, the two of the homes are proposed to be built perpendicular to Enfield Place, on tentative lots 25 and 27, and would be located within the bed of Enfield Place; and

WHEREAS, both of the lots within the bed of Enfield Place are 52.56 ft. by 125 ft., with a total lot area of 6,302 sq. ft. and are currently vacant; and

WHEREAS, access to the development is proposed to

be provided via a new T-shaped private street providing access to the homes from Summit Avenue, a final mapped street; and

WHEREAS, the Board notes that because the site is within the Special Natural Area District, the applicant must seek site plan approval from the City Planning Commission (CPC); and

WHEREAS, the applicant must also receive lot subdivision approval from CPC; and

WHEREAS, by letter dated May 31, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 15, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an adopted Drainage Plan D-4, which calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer to be installed in Enfield Place west of Summit Avenue; and

WHEREAS, therefore, DEP requires the applicant to provide a 32-ft. wide sewer corridor for the purpose of the future installation, maintenance, and/or reconstruction of the drainage plan, 10-inch diameter sanitary sewer, and 12-inch storm sewer; and

WHEREAS, in response to DEP's request, the applicant proposes a 20-ft. wide sewer corridor running through tentative lots 25 and 27, between the proposed houses, for the installation, maintenance, and/or reconstruction of the future sewers; and

WHEREAS, additionally, the applicant proposes a 30-ft. wide sewer corridor abutting tentative lots 25 and 27, running along the easterly portion of the mapped Enfield Place; and

WHEREAS, the proposed internal house sewer connection for the development will run from tentative lots 25 and 27 to the 8-inch diameter existing sanitary sewer in Summit Avenue, which will be located outside of the sewer corridor; and

WHEREAS, by letter dated August 21, 2006, DEP indicates that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated May 25, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has recommended denial on the grounds that the development of the proposed lots is within the mapped right of way and will prevent future development of the roadway as a connection to Summit Avenue; and

WHEREAS, however, the Board notes that the subject property is not presently included in DOT's Capital Improvement Program as stated in DOT's letter; and

WHEREAS, by letter dated May 4, 2006, the Staten Island Borough President has also recommended denial of this proposal as it will preclude connecting Summit Avenue to Richmond Road; and

WHEREAS, at hearing, the Board asked the applicant to provide an alternate site layout, which would not include any development within the bed of Enfield Place; and

WHEREAS, in response, the applicant provided a plan for five homes in a single row along Enfield Place; and

WHEREAS, the applicant represents that the alternate plan would create financial and practical difficulties; and

WHEREAS, specifically, the applicant represents that due to the grade at the site, development of a single row of homes would require additional expensive measures for the proposed gravity-based internal sanitary sewer line; and

WHEREAS, the applicant represents that the additional measures would likely include a private sewer filing with the City or an internal sewer pumping system at the rear of all units, which would necessitates further easements and the elimination of the proposed swimming pools; and

WHEREAS, the applicant submitted a letter from the project architect supporting this assertion; and

WHEREAS, the applicant also represents that the initial proposal with one home within the bed of Enfield Place provides better access for emergency vehicles since there would be a corner for making turns in the middle of the development rather than a straight dead end; and

WHEREAS, the applicant represents that the initial proposal meets Fire Department access requirements; and

WHEREAS, at hearing, the Fire Department stated that the alternate plan was unacceptable; because it did not provide a vehicle turnaround, even a requirement to fully sprinkler all homes would not provide an acceptable level of safety; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated October 21, 2005, acting on Department of Buildings Application Nos. 500779357 and 500779366 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 drawings filed with the application marked "Received August 15, 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 no permits shall be issued prior to CPC review and approval;

THAT any modifications to the BSA-approved plans, subsequent to CPC review, must be approved by the Chair prior to issuance of any permits;

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, October 17, 2006.

174-05-A

APPLICANT – Norman Siegel on behalf of Neighbors Against N.O.I.S.E., GVA Williams for (Hudson Telegraph Associates, LP) owner; Multiple lessees.
SUBJECT – Application July 29, 2005 – Neighbors against N.O.I.S.E. is appealing the New York City Department of Buildings approval of a conditional variance of the New York City Administrative Code §27-829(b)(1) requirements for fuel oil storage at 60 Hudson Street.
PREMISES AFFECTED – 60 Hudson Street, between Worth and Thomas Streets, Block 144, Lot 40, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Deborah Allen.
For Administration: Phyllis Arnold, Department of Buildings.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
THE RESOLUTION:

WHEREAS, the instant appeal, brought by a coalition of neighbors to the building at the subject premises (the "Building") known as Neighbors Against N.O.I.S.E. (hereinafter, "Appellant"), requests that the Board overturn a variance of the City's Building Code issued by the Department of Buildings ("DOB") on June 29, 2005 (the "Variance"); and

WHEREAS, the Variance reads in pertinent part:

"The building at 60 Hudson Street is an existing as-of-right commercial occupancy with many tenants in the telecommunications industry. The Building is 24 stories plus mezzanine and has floor plates of over 50,000 square feet each with thick concrete floors and high ceilings. The Building functions as a central switching facility for the telecommunications industry. Significant portions are leased to multiple telecommunications providers. Many of these tenants support essential telecommunications services to the region. As a result, they require secondary power capability in the event of a power outage.

The Building has experienced three power outages in recent years: the first as a result of the events of September 11, 2001; the second on July 20, 2002, when there was an explosion and fire in Con Edison's 14th Street facility; and most recently on August 14, 2003 when the entire northeast lost power.

Hudson Telegraph Associates ("Hudson"), the building owner, has applied for a variation from Code requirements for fuel oil storage under New York City Charter §645(b)(2) and Administrative Code §27-107. Section 27-107 of the Administrative Code authorizes the Commissioner to vary the requirements of the Code in specific cases pursuant to the provisions of §645(b)(2) of the Charter. That section provides that "where there is practical difficulty in complying strictly with the law relating to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction, and where equally safe and proper materials or forms of construction may be used, the Commissioner may allow the use of such materials, or of such forms of construction provided the spirit of the law is observed, safety secured, and substantial justice done."

The Department of Buildings retained Arup, a premier risk consultant, to assist in its evaluation of the application. In addition to Arup's evaluations and Hudson's submissions, the Department has considered comments from the Fire Department ("FDNY"), representatives of Neighbors Against Noise, Council Member Alan Gerson, Assemblywoman Deborah Glick, and Congressman Jerrold Nadler.

For the reasons that follow, the Department grants the requested variation on condition.

FINDINGS

The 15 fuel tanks at issue on floors 3, 10, 11, 12, 13 and Mezzanine (Affected Floors) are used as day tanks for emergency generators designed to supply power in the event of an outage. The 15 tanks have a capacity to hold 3,605 gallons of fuel, in comparison with the maximum of 1,650 permitted by Code on these six floors.

Hudson has demonstrated practical difficulty in complying strictly with the requirements of §27-829(b)(1). Specifically, the floors at issue are shared by multiple tenants, each needing up to four hours of back-up power, for which 275 gallons is inadequate. Space constraints make it operationally unfeasible to relocate the generators to other floors.

Hudson has demonstrated that the excess fuel tanks can be maintained in a manner that is equally safe to that which the Code requires and achieves the purposes of the 275 gallon limitation.

PROPOSAL

First, Hudson has proposed that the amount of fuel stored inside and above the lowest story of the Building will total approximately 6,400 gallons, including 1,600 on main roof and the setbacks, a quantity under the maximum of 6,875 gallons allowed by the Code.

Second, Hudson's proposal calls for enhanced fire safety measures to be implemented with respect to those tanks on the Affected Floors. Hudson proposes to enclose each tank room as well as its accompanying generator room with two-hour fire-resistant walls extending from floor to ceiling. It will fire-rate the floor/ceiling assemblies and all penetrations as well as the structural elements in these rooms. The tank rooms will thus be the functional equivalent of being located on separate floors. The tank and generator rooms will be protected by smoke and heat detectors. Both the tank and the generator rooms will have automatic

fire suppression systems and Hudson commits to sprinklering the corridors of the Affected Floors as well as all public halls to hand-filled packaged generator sets that may be located on other floors. Additionally, there is a proposed spill prevention program that includes a sill around each fuel room, a leak detection system for the piping, and rupture-containment tanks. The Fire Alarm Command Station ("FACS") is proposed to monitor all fire-detection and fire-alarm systems in the Building. There is proposed to be on-hand 24/7 a certified fire safety director, and all rooms will have a common key system to ease access by the Fire Department. All tanks, generators, and rooms will be vented in accordance with Code.

Third, to enhance the safety of the tanks in the Building that require manual filling, Hudson proposes to protect the Building's loading dock with a dry pipe sprinkler system.

DETERMINATION

The Department finds that there is practical difficulty in Hudson's complying strictly with §27-829(b)(1) of the Code as to fuel tanks located on floors 3, 10, 11, 12, 13, and the Mezzanine. The Department also finds that Hudson's proposal offers an equivalent level of safety to that provided by the Code, and that granting the variation from Code observes the spirit of the law, secures safety, and effects substantial justice, PROVIDED THAT:

1. The entire travel path of the fuel transferred by hand from the loading dock to the tanks needing re-fueling shall be identified, marked, and sprinklered. This includes corridors, rooms/tenant spaces through which the path travels, generator rooms, and tank rooms. The sprinklers here required in generator and tank rooms shall be in addition to suppression systems provided in those rooms.
2. Manual transfer and dispensing of the fuel shall be undertaken by individuals holding a FDNY Certificate of Fitness for Handling Motor Fuel – Portable Containers (W-14). Certificate holders shall be trained in Hudson's Spill Prevention and Countermeasures Plan.
3. The freight elevator shall be designated for the transport of manually transferred fuel, and there shall be back-up power for this elevator in the event of a power failure.
4. Fuel for manual filling operations shall be delivered in 55-gallon drums at the Building's loading dock and shall travel along the paths identified for such purpose. (See number 1 above) Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled.
5. There shall be a fire protection plan submitted to the Department and approved by FDNY for the manual transfer of fuel. It shall (a) set forth the procedures to be followed in connection with the transport and dispensing of fuel from the loading dock to the fuel storage tanks; and (b) set forth a spill prevention control plan. A copy of the approved plan shall be maintained at both departments.
6. There shall be a quantity of oil absorbent material maintained at all locations at which manual filling occurs sufficient to absorb fuel contained in the 55-gallon drum used for manual re-fueling.
7. There shall not be any manual filling of fuel tanks while the generator is running.
8. Pumped fuel supply from the basement shall stop upon detection of a leak or a fire affecting that fill piping system.
9. Tanks as well as tank rooms and generator rooms shall be vented in accordance with Code.
10. Tanks shall not be filled to more than 80% capacity.
11. There shall be provided 200% tank spill containment.
12. All tanks shall have a level-indicating device.
13. Fill connections on all manually-filled tanks, including tanks mounted under generators, shall be made accessible to avoid spills during manual filling.
14. All generators installed on the roof or setback roofs shall meet the noise control requirement of Code §27-770(a)(4), table 12-4.
15. All decommissioned fuel oil storage tanks shall be removed or closed and sealed in accordance with FDNY Rule, 3 RCNY 21-02. We understand FDNY will accept the use of foam as an approved material for this purpose.
16. Supplementary fire suppression, including water and FM 200 supplies shall be located outside tank rooms and generator rooms on the Affected Floors.
17. All fire detection and suppression systems as well as all other alarm and detection systems, including leak detection systems, shall connect to and be monitored at the FACS, which shall be monitored 24/7 by a Fire Safety Director.
18. The key that provides access to all fuel storage tanks shall be maintained at the FACS and be available to FDNY personnel at all times.
19. Upon request by FDNY, Hudson and its lessees will participate in an annual fire safety drill with respect to normal and emergency filling procedures.

20. All operations shall conform to those proposed by Hudson and articulated in the PROPOSAL above.
21. The Department and FDNY shall have the right to periodically inspect the Building to monitor compliance with the terms of the variance.
22. Installation of additional manually-filled tanks shall not be permitted except for replacement of existing manually-filled tanks. All future requests for the installation of additional tanks or generators shall be subject to prior review from the Department's Deputy Commissioner for Technical Affairs. Any additional installations shall be in full compliance with the Code.
23. All future alterations to existing installations shall be in accordance with Code and with the terms and conditions of this variance.
24. All calculations and drawings must be made internally consistent before the design phase.
25. The floor plans shall be revised to indicate the location and capacity of all tanks including outdoor installations.

Within 30 days of the date of this letter, Hudson shall submit to Buildings a plan to implement the measures required as conditions to the grant of this variance. That plan shall include an assessment of phasing out the manual transfer of fuel. Buildings reserves the right to modify this variance based on the assessment submitted.

Finally, as requested by Council Member Alan Gerson, we understand Hudson has agreed to use low sulfur fuel to improve emission of combustion by-products to the outside air and that Hudson will advise all tenants of this requirement for all future fuel deliveries."; and

WHEREAS, the Variance was issued to the owner of the Building (hereinafter, the "Owner") by DOB Deputy Commissioner Fatma Amer, P.E.; and

WHEREAS, the record contains a July 27, 2005 letter from DOB Commissioner Patricia Lancaster, FAIA, stating that Ms. Amer was acting on her behalf when issuing the Variance, and that it is a final DOB determination; and

HEARINGS

WHEREAS, a special public hearing was held on this application on January 25, 2006 (the "First Hearing"), after due notice by publication in *The City Record*, with special continued hearings on June 7, 2006 (the "Second Hearing") and September 13, 2006 (the "Third Hearing"), and then to decision on October 17, 2006; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, Appellant and DOB were represented by counsel in this proceeding; and

WHEREAS, representatives of the City's Fire Department ("FDNY") provided testimony; and

WHEREAS, additionally, representatives of the Owner appeared and made submissions; and

WHEREAS, the following elected officials support the appeal: Congressman Jerrold Nadler, Assemblywoman Deborah Glick, State Senator Martin Connor, Council Member Alan Gerson, and Borough President Scott Stringer; and

WHEREAS, Community Board 1, Manhattan, also supports the appeal; and

WHEREAS, finally, certain area residents testified or made submissions in support of the appeal; and

THE BUILDING

WHEREAS, the Building's certificate of occupancy (No. 115432) reflects that it has 24 floors and two mezzanines (an upper and a lower first floor mezzanine), as well as a basement, and lists the legal use as Use Group ("UG") 6 offices, and the Occupancy Code as E (Business); and

WHEREAS, as reflected in the text of the Variance, the Building's floor plates are over 50,000 square feet each; and

WHEREAS, the Building is located in an M1-5 zoning district within the Tribeca neighborhood of Manhattan, where a UG 6, Occupancy Code E office building is allowed as of right; and

WHEREAS, the City's Landmarks Preservation Commission ("LPC") designated the exterior and the interior lobby of the Building a landmark on October 1, 1991; and

WHEREAS, the Owner states that about 68 percent of the floor space within the Building is leased by various telecommunication companies; and

WHEREAS, some, but not all, of the floors are occupied by telecommunication companies that require emergency back-up generators for equipment in case of a power failure or black-out; and

WHEREAS, certain of these generators are connected to diesel fuel storage tanks located in the basement; others are connected to fuel storage tanks (known as day tanks) located on the floors; and

WHEREAS, the tanks on the floors that are not connected to any tanks in the basement are manual-filled; and

WHEREAS, the basement level also contains tanks that are for storage of fuel for heating purposes; and

WHEREAS, the Owner states that there are 65 total tanks in the Building, and that the capacity of all the tanks is 101,521 gallons; and

WHEREAS, some of the tanks are located in the basement and on the first floor, with the greatest gallon capacity being in the basement; and

WHEREAS, some tanks are located on the floors above the first floor; and

WHEREAS, additionally, some tanks are located outside the Building on the setbacks; and

WHEREAS, the Owner notes, however, that all tanks are only filled to 80 percent of capacity (a 81,217 gallon maximum of actual storage); and

WHEREAS, the Owner reports that 28 emergency generator systems on the floors above the first floor are fed from basement tanks, and that 18 systems rely on manual-filled day tanks; and

WHEREAS, eight of these 18 manual-filled tank systems are on the floors affected by the Variance; and

WHEREAS, the Owner further reports that the Building is currently undergoing a redesign that will result in a decline

in manual-filled tanks to 12, and an increase in pipe-filled tanks to 34; and

PRE-BOARD PROCEDURAL HISTORY

WHEREAS, upon inspection of the Building in 2002, DOB inspectors noticed that several floors had multiple interior fuel storage tanks, in violation of Building Code § 27-829(b)(1); violations were issued on November 6, 2002; and WHEREAS, Building Code § 27-829(b)(1) (hereinafter, "27-829"), provides "Inside of building above the lowest floor. Fuel oil storage tanks having a capacity of two hundred seventy-five gallons or less may be installed inside of buildings above the lowest story when provided with a four inch thick concrete or masonry curb, or with a metal pan of gauge equal to the gauge of the tank, completely surrounding the tank and of sufficient height to contain two times the capacity of the tank. The number of such oil storage tanks shall be limited to one per story."; and

WHEREAS, the Board notes that this provision is inapplicable to exterior tanks located outside on setbacks and roofs; such tanks do not count against the one per floor limitation; and

WHEREAS, however, DOB inspectors observed that six of the floors within the building have more than one interior tank; and

WHEREAS, specifically, at the time the inspection was made, the following floors had more than one interior tank: 3, 10, 11, 12 and 13 and the mezzanine (hereinafter, the "Affected Floors"); and

WHEREAS, in order to address these violations, the Owner applied to DOB for a variance of 27-829; and

WHEREAS, as reflected in the text of the Variance, DOB's authority to vary or modify 27-829 derives from the City Charter and the Building Code; and

WHEREAS, specifically, City Charter § 645(b)(2) provides, in pertinent part, that "where there is practical difficulty in complying strictly with the law relating to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction, and where equally safe and proper materials or forms of construction may be used, the Commissioner may allow the use of such materials, or of such forms of construction provided the spirit of the law is observed, safety secured, and substantial justice done."; and

WHEREAS, Building Code § 27-107 provides "The requirements and standards prescribed in this code shall be subject to variation in specific cases by the commissioner, or by the board of standards and appeals, under and pursuant to the provisions of paragraph two of subdivision (b) of section six hundred forty-five and section six hundred sixty-six of the charter, as amended."; and

WHEREAS, the application process lasted approximately two years; and

WHEREAS, during that time, the Owner made numerous submissions in support of its request for the Variance, including reports from its expert consultants in fire and general building safety; and

WHEREAS, DOB engaged a risk consultant (Arup and Partners Consulting Engineers; hereinafter, "Arup") to assist it in responding to the Owner; and

WHEREAS, DOB also consulted with FDNY; and

WHEREAS, Patrick McNally, FDNY's Chief of the Bureau of Fire Prevention, and FDNY counsel Julian Bazel stated at the Second Hearing, in sum and substance, that the FDNY assessed the proposed Variance and the Building primarily to gauge whether reasonable fire safety was achieved, both in terms of prevention and in terms of protection of firefighters in the event of fire; and

WHEREAS, more specifically, Chief McNally stated that the FDNY role was to look at the way fuel was stored, where it was stored, and to examine the manual transfer component; and

WHEREAS, DOB, Arup and FDNY conducted an inspection of the Building in December of 2003; and

WHEREAS, DOB notes that Appellant and certain elected officials were also aware of the pending application; and

WHEREAS, at the end of a two year process, DOB granted the Variance; and

WHEREAS, on the Affected Floors, the Variance allows more than one tank of 275 gallon capacity; and

WHEREAS, DOB notes that as of right, the Building can contain 6,875 gallons of fuel on the floors above the first floor, since there are 25 floors above the first floor (including the roof and mezzanine), and 25 times 275 equals 6,875; and

WHEREAS, the Board notes that in its first submission, DOB cites to the roof as a floor for purposes of this calculation; and

WHEREAS, as discussed above, tanks on setbacks and the roof are not subject to the one per floor requirement of 27-829; and

WHEREAS, the Board does note that the certificate of occupancy lists two mezzanines (an upper and lower), so conceivably the multiplier still could be 25; and

WHEREAS, the text of the Variance itself also states that the as of right total capacity above the first floor is 6,875 gallons and does not reference the roof; and

WHEREAS, however, since it is not clear that each of the mezzanines counts as a separate floor, the Board feels that it is more appropriate to maintain that as of right, the floors above the first floor could accommodate 6,600 gallons of fuel (based on 24 stories, including a single mezzanine); and

WHEREAS, DOB also correctly notes that the Affected Floors could, as of right, accommodate six total tanks (one on each floor) with a total capacity of 1,650 gallons (six times 275 gallons); and

WHEREAS, the Variance contemplates 15 tanks on the Affected Floors, and assumes that each will be a 275 gallon tank (for a total capacity of 3,905 gallons); and

WHEREAS, however, the Owner notes that on the Affected Floors, some of the tanks in use are smaller than 275 gallons and some tanks have been eliminated since the Variance was granted; and

WHEREAS, as evidenced by floor plans of the Affected Floors submitted into the record by the Owner, the actual total tank capacity is 2,165 gallons; and

WHEREAS, thus, pursuant to the Variance, the increment of capacity over what is allowed as of right on the

Affected Floors is 515 gallons; and

WHEREAS, DOB observes, and the Owner confirms, that tanks will be filled to 80 percent of nominal capacity; and WHEREAS, at 80 percent of capacity, the amount of fuel allowed as of right on the Affected Floors is 1,320 gallons (80 percent of 1,650); and

WHEREAS, 80 percent of the actual total tank capacity (2,165) is 1,732 gallons; and

WHEREAS, thus, because tanks are only filled to 80 percent of capacity, the increment of actual storage over what is allowed as of right is 412 gallons; and

WHEREAS, further, because not all of the Building's floors above the first floor contain tanks, even with the Variance, the total amount of fuel stored above the lowest story is less than what is permitted as of right; and

WHEREAS, specifically, as determined above, 6,600 total gallons are allowed as of right in the interior of the Building on the floors above the first floor; and

WHEREAS, based upon a chart submitted by DOB on May 17, 2006, which reflects the number and gallon capacity of tanks on each floor as well as roof and setbacks, as of May 4, 2006, the Board observes that the total amount of fuel capacity above the first floor is much less; and WHEREAS, this chart reveals that even when including tanks on setbacks, the total capacity of tanks above the first floor is 5,880 gallons; and

WHEREAS, Appellant does not dispute that DOB has the authority to vary 27-829; and

WHEREAS, instead, Appellant, in asking that the Board overturn the Variance, makes the following arguments: (1) the Variance will create a less safe condition than a Building Code-compliant condition; (2) the Owner does not suffer practical difficulties and could therefore comply with 27-829; (3) even assuming practical difficulties exist, they were self-created by the Owner; (4) DOB issued the Variance without the Owner first obtaining LPC approval for the tank installations; (5) so much fuel is stored in the building that it qualifies as a Bulk Oil Storage Plant pursuant to Fire Prevention Code § 27-4053, and thus cannot be located within 1000 ft. of a school, subway entrance/exit or subway ventilation shaft, or within 250 ft. of public park or residential zone; (6) the Variance impermissibly ignores: (a) fuel tanks located on the first floor of the Building; and (b) the amount of fuel in fuel risers and pipes; and

WHEREAS, for the reasons set forth below, the Board finds all of these arguments unpersuasive; and

SAFETY

WHEREAS, as to the first argument, the appellant states that DOB acted arbitrarily and capriciously in granting the Variance because the Building creates a clear and present danger to the surrounding community, even with the Variance provisions and conditions in place; and

WHEREAS, specifically, Appellant contends that: (a) DOB inappropriately only considered the Affected Floors when issuing the Variance; (b) the Variance conditions are inadequate to address the safety concerns raised by the Variance; (c) the Variance inappropriately permits the storage of high hazard material in violation of the Building Code; (d) the manual transfer of fuel, required for some of the tanks on the Affected Floors, is fundamentally dangerous and can never be as safe as mechanical means of fuel distribution; and (e) noise and particulate emissions were inappropriately not considered; and

The Need for a Comprehensive Analysis

WHEREAS, Appellant's primary argument is that DOB, in considering the Owner's request for the Variance, only focused on the Affected Floors and not the entire Building; and

WHEREAS, Appellant alleges that the Building is inherently dangerous because of the total amount of fuel stored there, both below, on and above the first floor; and

WHEREAS, Appellant further suggests that the Variance, because it permits more than the maximum amount of fuel on the Affected Floors, aggravates this danger; and

WHEREAS, Appellant argues that DOB should have engaged in a comprehensive risk analysis of the Building and all the fuel within it, in accordance with general (not specific to the Building) recommendations of a recent report of the National Institute of Standards and Technology ("NIST"); and

WHEREAS, Appellant also argues that DOB improperly failed to consider the ability of the Building to withstand a terrorist act or some other extraordinary event; and

WHEREAS, in response, DOB notes that it considered the Owner's variance application over the course of two years and consulted with both Arup and FDNY in assessing what safety concerns might result if the requested waiver was granted, and in developing conditions that would address any such safety concerns; and

WHEREAS, DOB cites to the various provisions and conditions of the Variance as evidence that all possible safety concerns were considered and addressed; and

WHEREAS, DOB also notes that the expertise utilized in formulating the Variance was informed by many of the concerns noted in the NIST report; and

WHEREAS, further, the Owner notes that the experts relied upon by DOB (Arup and FDNY) and one of its own experts (Dr. James Milke) have ample experience in analyzing catastrophic building events, including those that occurred on September 11, 2001; and

WHEREAS, the Board agrees that DOB proceeded cautiously and judiciously in reviewing the Owner's variance application, and that the solicitation of the expertise of both Arup and FDNY is evidence of this caution, regardless of the lack of any explicit mention of the NIST report in the Variance; and

WHEREAS, furthermore, neither the City Charter nor the Building Code require DOB to explicitly follow or refer to the recommendations found in the NIST report when issuing a Building Code variance; and

WHEREAS, thus, without intending any criticism of the NIST report, the Board finds that Appellant's apparent reference to it as the equivalent of binding authority upon DOB is misplaced and contrary to law; and

WHEREAS, moreover, notwithstanding the lack of any requirement to follow the NIST report, the Board disagrees with the fundamental contention that DOB took an inappropriately narrow view of the Building in granting the Variance; and

WHEREAS, as evidenced by the text of the Variance, areas other than the Affected Floors were in fact considered; and

WHEREAS, the Variance provides, among other things, that the Owner will: (1) sprinkler all public halls to manual-filled packaged generator sets that may be located on other floors (aside from the Affected Floors); (2) provide a Fire Alarm Command Station to monitor all fire-detection and fire-alarm systems in the Building; (3) provide a certified fire safety director around the clock seven days a week; and (4) ensure that all rooms will have a common key system to ease access by FDNY; and

WHEREAS, a review of the Variance also reveals that many of the imposed conditions address Building-wide fire safety concerns, not just those related to the Affected Floors; and

WHEREAS, for instance, those conditions concerning the manual transfer of fuel, as well as conditions concerning the monitoring of safety systems by a Fire Safety Director, FDNY access, drills with respect to normal and emergency filling procedures and inspections, relate to the entire Building; and

WHEREAS, as to general Building safety, the Board observes that Appellant has not submitted any evidence that it is inherently unsafe; and

WHEREAS, while Appellant suggests that diesel fuel storage on the upper floors of a building is unsafe, the Board observes that 27-829 allows 275 gallons of fuel per floor in a UG 6, Class E building, regardless of the total amount of floors or the size of the floor plates; and

WHEREAS, further, as noted above, the total amount of fuel stored above the lowest story is well within the limits allowed as of right by the Building Code; and

WHEREAS, additionally, at the Second Hearing, Chief McNally stated that he observed the various fuel storage tanks in the Building, including those in the basement, and concluded that the total amount of fuel storage is normal for a building of this size; and

WHEREAS, finally, as to the possibility of a terrorist attack or other catastrophic event, the Board understands the particular sensitivity of those in the Tribeca neighborhood to the risk of such an occurrence and does not wish to minimize the sincerity of emotion that informs it; and

WHEREAS, however, the Board is unaware of any law currently in effect that would require DOB to engage in an explicit assessment of the impact that a deliberate act of sabotage might have upon a building prior to the issuance of a variance of a Building Code provision related to the maximum amount of fuel tanks per floor; and

WHEREAS, the Board notes that the only detailed example of a potential act of sabotage offered by Appellant was its expert's proposed scenario in which a disgruntled building employee would have the ability to potentially start multiple fires at tanks on Affected Floors; and

WHEREAS, while the Board is not inclined to discount even the remotest possibility of foul play as a legitimate concern in the abstract, it observes that 27-829 does not operate to minimize the possibility of such acts; and

WHEREAS, instead, as noted by applicant and as discussed below, this provision serves as a mechanism that could potentially assist in containing the spread of fire to a particular floor; and

WHEREAS, accordingly, DOB is not required conduct a Building-wide assessment of vulnerability to sabotage or to fashion a condition that would specifically address this risk; and

WHEREAS, instead, it is reasonable to conclude that security against sabotage is, and should remain, the responsibility of the Owner and the Building's tenants, in consultation and cooperation with the New York City Police Department as indicated; and

The Adequacy of the Variance Conditions

WHEREAS, Appellant argues that the conditions imposed in the Variance do not provide an equivalent amount of safety to 27-829, or to other codes not currently applicable in the City; and

WHEREAS, Appellant suggests that many of the conditions address the manual transfer of fuel, or are just common sense requirements that do not exceed Building Code requirements; and

WHEREAS, DOB responds that it carefully considered the impact of the requested Building Code waivers, and in consultation with the FDNY and Arup, carefully crafted provisions and conditions that would effectively address any safety concerns; and

WHEREAS, DOB maintains that in many respects the conditions attached to the Variance raise the level of fire safety within the Building significantly beyond what would result under an as of right condition; and

WHEREAS, first, the Board finds discussion of other codes currently without legal effect in this City to be irrelevant; and

WHEREAS, the Board understands that certain elements of the Building and Fire Code are in the process of being updated, and that the provisions at issue here may be amended as part of this process; and

WHEREAS, however, both DOB and this Board are only authorized to rule upon codes and laws that are in effect today; and

WHEREAS, moreover, there is no evidence that the provisions of the other cited codes, if applied in the City, would be more restrictive then existing Building Code provisions in all cases; and

WHEREAS, second, the Board has reviewed the conditions and requirements of the Variance and finds that they are appropriately tailored to the concern at hand; and

WHEREAS, as stated by the Appellant, the goal of 27-829 is to prevent the spread of fire within a building; and

WHEREAS, by limiting the amount of tanks to one per floor, 27-829 presumes that the floors and ceiling of a floor within a building will act as a sufficient fire stop such that a fire on one floor would not potentially ignite more than one tank; and

WHEREAS, thus, any variation of 27-829 would need to include measures designed to achieve this goal; and

WHEREAS, the Board observes that many of the Variance provisions and conditions are designed with this goal in mind; and

WHEREAS, specifically, the Board notes that the enclosure rooms are fire-rated and sprinklered, and contain automatic fire suppression systems; and

WHEREAS, the Board considers these specific requirements well-measured and sufficient to address any increase in danger that the absence of strict compliance with 27-829 might create; and

WHEREAS, additionally, Chief McNally observed at the Second Hearing that after visiting the building and reviewing the proposed Variance conditions, he was satisfied that his prevention and firefighting concerns were addressed, and stated that the maintenance of more than one tank on the Affected Floors does not pose a problem for FDNY in terms of operations; and

WHEREAS, finally, the Board observes that an expert produced by Appellant at the First Hearing informed the Board that the Variance conditions represented improvements over an as of right condition, and that the conditions were adequate; and

WHEREAS, accordingly, it rejects Appellant's argument that the Variance provisions and conditions are insufficient in creating an equivalent level of safety as full compliance with 27-829; and

The Manual Transfer of Fuel

WHEREAS, as noted above, certain of the day tanks on the Affected Floors (as well as certain other tanks not on Affected Floors) are filled through manual transfer of fuel; and

WHEREAS, Appellant argues that the manual transfer of fuel to these day tanks on the Affected Floors is inherently less safe than the piping of fuel to tanks on the floors from tanks in the basement; and

WHEREAS, Appellant states that generally no system that relies upon human conduct is safer than an engineered system that relies only on mechanical processes; and

WHEREAS, more specifically, in a submission dated April 25, 2006, Appellant's consultant states that the regular transporting of fifty-five gallon drums of liquid fuel inside the Building presents an increased likelihood of potential ignition, whether accidental or intentional; and

WHEREAS, the consultant goes on to state that such drums may be dropped or damaged during transport; and

WHEREAS, at the Second Hearing, Appellant's consultant expressed concern that there would be multiple employees from multiple employers carrying carts with fuel drums through a variety of areas within the Building; and

WHEREAS, in its August 24, 2006 submission, Appellant argues that manual filling of tanks is a violation of the Building Code and again reiterates that such activity is unsafe; and

WHEREAS, the Board observes that Chief McNally testified that piping was preferable to manual filling, if piping could be achieved; and

WHEREAS, however, Chief McNally also testified that to ensure equal safety, any individual engaging in the manual transfer of fuel within the Building would have to possess a certificate of fitness for fuel handling so that the individual would have an understanding of how to safely transfer fuel to and fill the tanks; and

WHEREAS, this certificate requirement is a condition of the Variance, and the Owner testified that only its employees (not tenants' employees) would handle the manual transfer of fuel; and

WHEREAS, in addition to the certificate requirement, many of the Variance provisions and conditions concern manual transfer; and

WHEREAS, for instance, the manual fuel transfer path is fully sprinklered and spill containment materials must be supplied; and

WHEREAS, the Board notes that these provisions and conditions were formulated by DOB in direct consultation with FDNY and with Arup; and

WHEREAS, though manual transfer may not be the preferred method of delivering fuel to certain of the tanks located on the upper floors of the Building, it is the Board's conclusion that the Variance provisions and conditions act to acceptably mitigate the risks associated with such transfer; and

WHEREAS, in other words, even if it is not the preferable method of fuel distribution, manual transfer can be conditioned such that it is sufficiently safe to achieve the purpose of the Building Code and meet with FDNY approval, as occurred here; and

WHEREAS, thus, the Board finds that the manual transfer component of the Variance does not foreclose the possibility of a finding that the Variance provides a degree of safety that is the equivalent of full compliance with 27-829; and

WHEREAS, that being said, the Board notes that at the Third Hearing, the Owner states that after manual filling occurs, there will be no storage of excess fuel in 55 gallon drums at the Building; and

WHEREAS, instead, the plan is to have pre-filled drums arrive at the loading dock, which will then be transferred to tanks in need of manual refilling until emptied; and

WHEREAS, the Board finds that this is an acceptable plan, but notes that one of the Variance conditions allows the storage of excess fuel in 55 gallon drums in the basement; and

WHEREAS, so that the Variance reflects the intentions of the Owner, the Board will modify the Variance to add the following condition: "There shall be no storage of excess fuel in 55 gallon drums in the basement or anywhere else within the building"; and

WHEREAS, additionally, that part of condition 4 in the Variance that reads "Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled" shall have no effect; and

High Hazard Occupancy

WHEREAS, Appellant argues that the storage of diesel fuel within the Building, and the Building itself, constitutes a high hazard occupancy pursuant to the Building Code; and

WHEREAS, Appellant submitted a letter from a consultant dated August 13, 2006 in support of this position; and

WHEREAS, the consultant, both in this letter and in testimony given at the Third Hearing, contends that the storage of diesel fuel constitutes a high hazard occupancy (Occupancy Group A) pursuant to Building Code § 27-243; and

WHEREAS, Building Code § 27-243 provides in part "Buildings and spaces shall be classified in the high hazard occupancy group when they are used for storing,

manufacturing, or processing potentially-explosive products or materials, or highly-combustible or highly-flammable products or materials that are likely to burn with extreme rapidity . . .
(a) Typical material contents. . . . fuel or other oils having a flash point under 200F (tag closed cup) . . .”; and

WHEREAS, the consultant believes that the flash point of diesel fuel used in the Building is between 100 degrees Fahrenheit, based upon the flash point listed on a Material Safety Data Sheet for diesel fuel submitted into the record by DOB, and possibly 124 degrees, based upon his own knowledge; and

WHEREAS, the consultant explains that the flash point is the temperature at which a combustible substance such as diesel fuel begins to emit vapors that could ignite if it travels to a potential ignition source; and

WHEREAS, the consultant notes that the flash point is certainly less than the 200 degree point referenced in Building Code § 27-243; and

WHEREAS, thus, the consultant concludes that the storage of diesel fuel must be considered a Class A occupancy; and

WHEREAS, the consultant contends that a Class A high hazard occupancy is not allowed in a non-combustible structure such as the Building without full sprinkler protection, pursuant to Table 4-1 of the Building Code; and

WHEREAS, the consultant also argues that Class A occupancies must be protected by four-hour rated enclosures rather than the two-hour rated enclosures provided for by the Variance; and

WHEREAS, the consultant also expressed concern about the potential spillage and ignition of diesel fuel, especially during the manual transfer process; and

WHEREAS, finally, the consultant also expressed concern about the leakage of fuel from the piping connecting the day tanks to the generators; and

WHEREAS, in sum, the consultant makes four arguments: (1) the classification of the tank and generator enclosures should be Class A, High Hazard; (2) neither the sprinkler system or the enclosure fire-rating meets Building Code requirements for a Class A occupancy; (3) the flash point of diesel fuel could be as low as 100 degrees, which makes it inappropriate for manual transfer; and (4) that fuel in the piping from the tank enclosure to the generator could leak and pose a danger; and

WHEREAS, in response to the classification issue, DOB submitted a letter from its Deputy Commissioner for Technical Affairs, dated August 30, 2006; and

WHEREAS, the Deputy Commissioner explains that neither the Building nor the storage of diesel fuel therein is a high hazard occupancy under the Building Code, because the fuel tanks are not a stand-alone occupancy; and

WHEREAS, rather, the tanks and generator systems, like other accessory storage tanks and generators in other buildings, are classified as mechanical spaces, which are D-2 occupancies; and

WHEREAS, the Deputy Commissioner cites to Table 3-2 of the Building Code, which classifies as D-2 occupancies mechanical and electrical equipment rooms, power plants, and certain boiler and furnace rooms; and

WHEREAS, the Board agrees that this establishes that the mere presence of a fuel tank and generator within a space in a building does not mean that the space is a Class A occupancy; and

WHEREAS, the Board also observes that in a list of proposed occupancy codes for various activities set forth in the Building Code’s Reference Standards (RS 3-3), certain uses that would be classified as Class A occupancies if one accepted the consultant’s argument are instead placed in a different classification; and

WHEREAS, for instance, RS 3-3 provides that “Fuel Sales” establishments, open or closed, of 5,000 sq. ft. or less, are Class E (business) occupancies, not Class A, in spite of the reasonable conclusion that tanks of fuel are present at such establishments so that fuel can be sold; and

WHEREAS, thus, the Board agrees that the accessory day tanks used in conjunction with the emergency generators are not a primary occupancy nor a high hazard occupancy, but are, as DOB states, accessory D-2 occupancies that are permitted as of right within the Building; and

WHEREAS, further, the Board observes that both the fire rating of the enclosures and the sprinkler system comply with the D-2 occupancy requirements; and

WHEREAS, as to the safety of diesel fuel generally, the Owner submitted letters from its two experts that address this concern; and

WHEREAS, specifically, in a letter dated September 19, 2006, Dr. Milke explains that the flash point of low sulfur diesel fuel is in excess of 125 degrees Fahrenheit; and

WHEREAS, Dr. Milke explains that protection measures as specified in national codes, if implemented, provide an acceptable level of safety for diesel fuel generators; and

WHEREAS, Dr. Milke then highlighted the specific measures present within the Building, including the redundant sprinklers, the “tank within a tank design” of the day tanks, and heat and smoke detectors, that comport with such national codes; and

WHEREAS, additionally, in a letter dated September 19, 2006, Highland Associates cited to the leak detection system that alarms locally within the tenant offices and at the Building’s Fire Command Station; and

WHEREAS, the Board agrees that diesel fuel may be safely handled at temperatures above the flash point; and

WHEREAS, the Board further agrees that all of the additional safety measures cited by the Building’s experts mitigate any danger related to the manual transfer of fuel, and the storage of fuel in day tanks; and

WHEREAS, specifically, the Board cites to the requirement that all individuals manually transferring fuel possess the FDNY certificate, the requirement that spill containment measures are in place and the requirement that the transfer path be fully sprinklered; and

WHEREAS, further, as noted above, the Board agrees that the enclosures as contemplated by the Variance, along with the other provisions and conditions, provide at least equal safety as full compliance with 27-829 on the Affected Floors; and

WHEREAS, the Board notes that the flash point of the diesel fuel is not specific to the Affected Floors but relates to any tank and generator systems within the Building; and

WHEREAS, thus, any concern about the flash point relates not the specific variation of 27-829, but rather to Appellant's broad concern about diesel fuel in general; and

WHEREAS, the Board agrees with the Owner that the sprinkler system and other safety systems provide sufficient fire suppression in the event of a fire; and

WHEREAS, however, the Board notes that the heat detection and sprinkler heads within the generator enclosures are set at temperatures higher than 100 degrees; and

WHEREAS, the Board believes that in order to achieve maximum safety within the enclosure rooms, it is reasonable to require that the temperature within the rooms be maintained at less than 100 degrees; and

WHEREAS, a condition requiring the Owner to ensure that each generator enclosure remains under 100 degrees Fahrenheit: (1) addresses any concerns about the flash point of the diesel fuel, as raised by Appellant; and (2) provides an additional safety measure that enhances the overall safety within the Building; and

WHEREAS, accordingly, the Board will add the following condition to the Variance: "Within six months of October 17, 2006, a ventilation, climate control or other cooling system will be installed (if one does not exist already) in each generator enclosure room, and the temperature in each such enclosure room will be monitored and maintained at under 100 degree Fahrenheit"; and

Noise and Particulate

WHEREAS, Appellant argues that DOB failed to consider the effect the Variance would have on noise and particulate emissions; and

WHEREAS, DOB responds that no additional fuel will be burned as a result of the Variance as opposed to what would result from an as of right condition, and that the Variance in any event was not an "action" under State and City environmental rules; and

WHEREAS, DOB also notes that the Variance does not waive or vary compliance with any applicable law concerning particulate or noise emission; and

WHEREAS, in fact, one of the Variance conditions specifically provides that all generators installed on the roof or setback roofs shall meet the noise control requirements of the City's Noise Code; and

WHEREAS, finally, the Board observes that the number of tanks on the Affected Floors has no bearing on the amount of noise and particulate, since it is the generators that allegedly emit noise and particulate, not the tanks; and

WHEREAS, in sum, the Board agrees that noise and particulate issues are not relevant to the issue at hand, and are within the jurisdiction of other agencies; and

Additional Conditions

WHEREAS, as already noted, the Board agrees with DOB's determination that the Variance provides an equivalent amount of safety as full compliance with 27-829, and with its observation that the Variance provisions and conditions have the secondary effect of creating a greater overall level of fire safety within the Building than an as of right condition; and

WHEREAS, although the Board disagrees that the Building or any of the uses within it are unsafe, it observes that the two additional measures the Board would like the Owner to undertake, if clarified as conditions in the Variance, will either further enhance the effect of making the Affected Floors even safer than required by the Building Code or modify the Variance to the extent that it would better comport with the final representations of the Owner made during the hearing process; and

PRACTICAL DIFFICULTIES AND SELF-CREATED HARDSHIP

WHEREAS, pursuant to City Charter § 645(b)(2), an applicant for a Building Code variance must establish that there is a "practical difficulty in complying strictly with the law relating to the use of prescribed materials, the installation or alteration or service equipment, or methods of construction"; and

WHEREAS, the Owner represented to DOB prior to the issuance of the Variance that the claim of practical difficulties is based upon the following: (1) the Affected Floors are leased by multiple tenants, who, in the aggregate, require more than one 275 gallon tank for their emergency power generation needs; (2) tenants on the same floor cannot be supported by one tank in any event since this would require a third-party entity to operate and manage that floor's specific fuel system, which would be objectionable to the tenants, given their individual lease agreements; and

WHEREAS, the Owner also argued that a basement pump system is infeasible because if it failed, a day tank could be depleted before maintenance workers could fix the pump, and power would be lost; and

WHEREAS, the Owner noted that having a header system from a single tank that would serve multiple generators on a floor would be more dangerous than multiple isolated day tanks because it would spread the fuel through out the entire floor; and

WHEREAS, finally, the Owner's consultant submitted a report that noted that the generators themselves could not be relocated because there was no space in the basement or on the first floor for them, and also because there was insufficient space to construct access routes for enough power conduits to support the 7.6 megawatts of electrical power from the generators, or to construct access routes for control wiring to the generators to tenant spaces and tank rooms; and

WHEREAS, DOB acknowledges some of the above as a legitimate practical difficulty in the Variance, noting that the Affected Floors are shared by multiple tenants, each needing up to four hours of back-up power, for which 275 gallons is inadequate, and that space constraints make it operationally unfeasible to relocate the generators to other floors; and

WHEREAS, Appellant argues that: (1) no practical difficulty exists because the Owner and tenants could achieve the stated emergency power needs through alternative means that comply with the Building Code; and (2) any practical difficulty was self-created and should not be rewarded through a variance; and

Alternate Means of Compliance

WHEREAS, subsequent to the first hearing, the Board asked DOB to discuss the possibility of alternative means of providing back-up power to the emergency generators; and

WHEREAS, DOB, in response, noted three different means: (1) hydrogen fuel cells; (2) natural gas; and (3) micro-turbine technology; and

WHEREAS, DOB stated that hydrogen cell technology, while permissible, is restricted to outdoor installation and is very bulky; and

WHEREAS, DOB stated that natural gas is not considered a safer alternative to the current use of diesel fuel; and

WHEREAS, finally, DOB stated that micro-turbine technology has not yet been approved; and

WHEREAS, the Board agrees that none of the alternative means are viable methods of addressing the Building's tenants emergency power needs, due to the Building's inability to accommodate the bulk of the means, the safety of such means, or the legality of such means; and

Self-created Hardship

WHEREAS, Appellant states that the claimed practical difficulty is self-created and therefore cannot be considered by DOB because: (a) the Variance legalizes illegal conditions; (b) the practical difficulty was known to the Owner at the time the tanks were installed on the Affected Floors; (c) the practical difficulties relate only to the business needs of the Owner; and

WHEREAS, first, Appellant contends that since the tanks on the Affected Floors were installed without permits, any variance issued to rectify this is necessarily arbitrary and capricious; and

WHEREAS, the Board disagrees, noting that neither Charter § 645(b)(2) nor Building Code § 27-107 prohibit a variance of code provision that would legalize existing conditions; and

WHEREAS, the Board also notes that Appellant does not cite to any authority that supports this contention; and

WHEREAS, second, Appellant argues that since the limitations of the Building were known to the Owner, any practical difficulty in complying with 27-829 is self-created; and

WHEREAS, again, neither Charter nor Building Code provide that knowledge of the condition negates the ability to seek or receive a Building Code variance, and authority for this proposition was not provided; and

WHEREAS, the Board observes that it has granted other Code variances based upon a practical difficulty that is plainly evident to the owner of the building at the time the variance is requested; and

WHEREAS, for instance, under BSA Cal. No. 383-03-A, the Board allowed the conversion of an office building to residential use without the provision of an atrium enclosure, contrary to a provision of the 1938 Building Code; and

WHEREAS, the lack of an atrium enclosure was obvious to the owner of the building in question when it pursued a variance of the Code provision; and

WHEREAS, likewise, under BSA Cal. No. 27-04-A, the Board allowed the establishment of a commercial use at Pier 94 without the provision of a covered exterior egress path, contrary to Building Code § 27-369(f) ; and

WHEREAS, again, the inability to cover the egress path was obvious to the owner of the property; and

WHEREAS, thus, knowledge of the condition that requires a Building Code waiver does not foreclose the ability to receive such waiver; and

WHEREAS, third, Appellant claims that practical difficulties cannot be based upon the business needs of the Owner or a desire to avoid unreasonable expense; and

WHEREAS, the Board disagrees, and again cites to Cal. No. 27-04-A; and

WHEREAS, in that case, the Board credited testimony from the owner that the provision of the atrium enclosure was cost-prohibitive and would diminish expected residential revenue; and

WHEREAS, the Board observes that the practical difficulty standard, in the context of a variation of the Building Code, is not the same standard as unnecessary hardship for a zoning variance under ZR § 72-21; and

WHEREAS, unlike a zoning variance, where physical uniqueness related to the parcel of land itself is usually required, the business needs of the owner of the premises and the existing built conditions can properly be considered, especially where, as here, such needs intersect with pre-existing physical constraints related to the building itself; and

WHEREAS, in fact, since a Building Code waiver will almost always relate to a proposed building form, construction method or a proposed occupancy, it is difficult to envision a practical difficulty that would not in some way relate to the particular needs of the building owner or business occupying the building; and

WHEREAS, thus, the Board finds that where compliance involves a practical engineering difficulty and imposes a related financial burden that is unnecessary in light of a sufficiently safe alternative, the Charter and Code provide DOB with authority to waive or modify compliance; and

WHEREAS, in conclusion, the Board disagrees that the practical difficulty claimed by the Owner constitutes an impermissible self-created hardship; and

Clarification of Practical Difficulties

WHEREAS, the Board recognizes the need to have a back-up power supply for generators that service important telecommunication equipment in case of power failure or other emergency; and

WHEREAS, nonetheless, during the hearing process the Board asked for further clarification of the evidence submitted by the Owner to DOB in support of the practical difficulty claim; and

WHEREAS, more specifically, the Board asked the Owner if the various generators in the Building could be centrally connected to a basement-fed tank systems via vertical risers and horizontal piping to the day tanks on all floors; and

WHEREAS, this would eliminate the need for the manual transfer of fuel and the 27-829 waiver; and

WHEREAS, at the Second Hearing, the Owner explained that due to the existing telecommunication and electric lines within the Building, and the fact that there a multiple tenancies within the Building that need a separate tank servicing a separate generator, running fuel lines from basement tanks (thereby

limiting tanks to one per floor) is infeasible; and

WHEREAS, further, in its August 23, 2006 submission, the Owner submitted a letter to DOB dated May 3, 2006 from the Owner's counsel, which further explained the physical and logistical difficulties as to full compliance with 27-829; and

WHEREAS, this letter highlights the Owner's previous submissions to DOB as to practical difficulties, and cites to its engineering consultant's assessment of the infeasibility of compliance (also included in the August 23 submission); and

WHEREAS, the Board has reviewed the August 23 submission and the May 3 letter to DOB, as well as the supporting materials referenced therein, and agrees that it provides sufficient evidence of practical difficulty as to compliance with 27-829; and

LANDMARKS PRESERVATION COMMISSION REVIEW

WHEREAS, Appellant argues that DOB's issuance of the Variance was legally defective because LPC review and approval of the Variance was not obtained prior to its issuance; and

WHEREAS, Appellant cites to Administrative Code ("AC") § 25-203(a)(1), which provides in part that it shall be "unlawful to alter, reconstruct or demolish any improvement constituting a part of a landmark site unless [LPC] has issued a certificate of no effect, a certificate of [appropriateness] or a notice to proceed authorizing such work"; and

WHEREAS, at the outset, the Board observes that DOB's issuance of the Variance is not an alteration, reconstruction or demolition of the Building; rather, it is an exercise of its authority to waive 27-829; and

WHEREAS, thus, the Board disagrees that AC § 25-203(a)(1) prevents DOB from issuing the Variance without the Owner first obtaining LPC approval; and

WHEREAS, however, the Board observes that AC § 25-203(b)(1) provides in part "no application shall be approved and no permit or amended permit for the construction, reconstruction, alteration or demolition of any improvement located or to be located on a landmark site or in an historic district or containing an interior landmark shall be issued by the department of buildings . . . until the commission shall have issued either a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed pursuant to the provisions of this chapter as an authorization for such work."; and

WHEREAS, Appellant argues that the prohibition on issuance of a plan approval application or an actual building permit also acts as a prohibition on the issuance of a Building Code variance; and

WHEREAS, however, a Building Code variance issued by DOB is not the equivalent of the issuance of a plan approval application or a building permit; and

WHEREAS, subsequent to the issuance of the Variance, the Owner is still required to submit to DOB an application for approval of plans showing all work and installations contemplated under the Variance and to obtain permits for such work; and

WHEREAS, the Board observes that the Owner has submitted into the record LPC approvals for such installations and work, which is contrary to Appellant's argument that no such approvals were obtained; and

WHEREAS, even assuming *arguendo* that Appellant is correct in its assertion that the work proposed under the Variance should have received LPC sign-off prior to formal issuance of the Variance, the Board considers the subsequent acquisition of required LPC approvals a sufficient cure, and invalidation of the Variance would not be indicated; and

WHEREAS, because the Board finds that DOB's issuance of the Variance did not constitute a violation of AC § 25-203(b)(1), the Board declines to make a determination upon DOB's argument that tanks that service emergency generators are not subject to LPC approval because they are exempt from LPC review, as per letters from LPC to DOB dated May 8, 1995 and October 27, 2005; and

BULK OIL FUEL PLANT REGULATIONS

WHEREAS, Appellant argues that the Variance was improperly issued because the Building meets the definition of "Bulk Oil Fuel Plant" (hereinafter, "BOFP"), as set forth at Section § 27-4002(31) of the City's Fire Prevention Code (hereinafter, "27-4002"); and

WHEREAS, 27-4002 provides that a BOFP is "a building, shed, enclosure or premises, or any portion thereof, in which petroleum or coal tar, or the liquid products thereof, are stored or kept for sale in large quantities."; and

WHEREAS, pursuant to Fire Prevention Code § 27-4053(b)(3), a BOFP is not permitted within 1,000 feet of a school, subway entrance/exit or subway ventilation shafts; and

WHEREAS, pursuant to Fire Prevention Code § 27-4053(c)(2), a BOFP is not permitted within 250 ft. of a public park or a residential zone; and

WHEREAS, Appellant argues that the Building violates both of these provisions, and cites to subway entrances, schools, parks, and residential buildings near the Building in support of this argument; and

WHEREAS, DOB disagrees that the Building is a BOFP, and states that neither it nor FDNY has applied the BOFP definition to UG 6, Occupancy Group E buildings such as the Building; and

WHEREAS, DOB submitted a letter from the FDNY, dated July 1, 2004, in support of this statement; and

WHEREAS, in this letter, then-FDNY Chief of Fire Protection James Jackson states that the BOFP definition is inapplicable to the fuel storage at the Building; and

WHEREAS, additionally, at the Second Hearing, Chief McNally stated that he conducted a site visit and concluded that the Building was not a BOFP; and

WHEREAS, Chief McNally noted that BOFPs are very large operations that store fuel in amounts that exceed normal Building Code requirements; and

WHEREAS, instead, Chief McNally noted that the amount of fuel stored there was consistent with other Class E office buildings; and

WHEREAS, DOB argues that it and FDNY only apply the BOFP definition to certain industrial facilities or utilities where fuel is stored or kept for sale in quantities in excess of Building Code limitations; and

WHEREAS, again, Chief McNally's statement at the

Second Hearing confirms this; and

WHEREAS, Chief McNally also stated that some facilities do not actually meet the BOFP definition, but FDNY imposes the certificate requirement anyway and the facility cooperates; and

WHEREAS, DOB notes precedent that establishes that where the administrative agency charged with administration and enforcement of a particular provision (here, FDNY) has historically and consistently applied an interpretation of a provision, deference must be given to that provision; and

WHEREAS, Appellant argues that the phrase "for sale" in the BOFP definition only modifies the word "kept" and not the word "stored", and cites to various cases that establish that when the word "or" is used, it indicates that the language that follows is to be construed in an alternative sense; and

WHEREAS, since the BOFP definition is less than clear, the Board asked Appellant to research the legislative history of the BOFP definition; and

WHEREAS, the results of Appellant's legislative history research were inconclusive, and did not illuminate what types of facilities would fall under the definition; and

WHEREAS, the Board also asked DOB to provide a list of all facilities within the City where a Certificate of Fitness for a supervisor of a BOFP was issued (this certificate is a different type of certificate of fitness from that required of individuals handling the manual transfer of fuel pursuant to the Variance); and

WHEREAS, DOB provided a list of such facilities, and noted that the majority of them are facilities where fuel or oil is kept or stored for sale; and

WHEREAS, such facilities include gas and oil company depots and industrial terminals; and

WHEREAS, the remainder are facilities that technically did not meet the BOFP definition as applied by FDNY because fuel stored there was not for sale, but where a certificate of fitness was required nonetheless given the type of facility and the amount of fuel stored; and

WHEREAS, such facilities include power stations, certain government facilities, and dry docks; and

WHEREAS, the Board has considered all of the arguments made by both Appellant and DOB, and concludes that DOB's position is correct; and

WHEREAS, first, the Board notes that Appellant does not provide the Board with an interpretation that can be applied in a consistent and rational manner; and

WHEREAS, Appellant does not state how much fuel or oil has to be stored within a building for it to meet the "in large quantities" phrase in the BOFP definition; and

WHEREAS, as noted above, Chief McNally observed the tanks within the Building and determined that the amount of fuel in the basement (where the great majority of fuel is stored) is consistent with other similarly-sized buildings; and

WHEREAS, further, the Board observes that there are many other buildings within the City that are as large or significantly larger than the Building; and

WHEREAS, if the mere presence of a significant (but Building Code-compliant) quantity of fuel in such buildings is enough to appropriately categorize the building as a BOFP – even where such fuel is stored below-grade – then it very likely that numerous office, hotel, residential, and institutional buildings are in violation of the 1000 ft. and 250 ft. rules set forth in the Fire Prevention Code; and

WHEREAS, further, no such building, if categorized as a BOFP, could ever be connected to a public drain or sewer, pursuant to Fire Prevention Code § 27-4053(c); and

WHEREAS, obviously, Appellant's amorphous interpretation would lead to absurd results, which is contrary to a basic canon of statutory interpretation; and

WHEREAS, further, the Board observes that Appellant's interpretation relies upon the word "or" as an absolute boundary line between the word "stored" and "kept for sale", but ignores the word "or" as to the phrase "in large quantities"; and

WHEREAS, the Board finds this inconsistent: if the word "or" separates the word "stored" from the phrase "kept for sale", then it should also separate "stored" from the remainder of the definition; and

WHEREAS, the Board notes that no commas or other punctuation marks are used in the provision that would indicate that the phrase "in large quantities" modifies both the word "stored" and the phrase "kept for sale"; and

WHEREAS, thus, under Appellant's interpretation, the word "stored" would not be modified by "in large quantities", but would instead stand alone; and

WHEREAS, however, the mere storage of any quantity of fuel or oil, large or small, obviously does not compel application of the BOFP definition; and

WHEREAS, thus, the Board finds Appellant's reliance on the cited precedents related to the work "or" is selectively, and therefore inappropriately, applied; and

WHEREAS, at most, Appellant's interpretation points out the fact that the provision is not particularly well-drafted; and

WHEREAS, the Board further observes that the BOFP definition and the distance provisions should be read in the context of all of the provisions related to BOFPs in the Fire Prevention Code, as suggested by one of the Owner's consultants in a letter dated June 24, 2004; and

WHEREAS, the Board observes that these provisions obviously were enacted in contemplation of the large-scale storage of fuel by facilities of the type set forth on the DOB list; and

WHEREAS, for instance, Fire Prevention Code § 27-4053(b)(2)(A) references 50,000 gallon tanks, § 27-4053(b)(2)(B) references 200,000 gallon tanks, and § 27-4053(b)(3)(B) references tanks of up to six million gallons in capacity; and

WHEREAS, other provisions reference above-ground tanks (§27-4053(b)(3)), tank foundations (§27-4053(b)(9)), and other installations obviously indicative of an industrial facility or utility, not a Class E building; and

WHEREAS, finally, the Board notes that the list of facilities where a certificate of fitness requirement was imposed either because the facility was a BOFP or because it was deemed by FDNY to be prudent to impose the requirement does not appear to include any Class E office

buildings; and

WHEREAS, in conclusion, the Board finds that Appellant's interpretation is so inappropriately ill-defined that it would provide no guidance whatsoever as to what types of buildings qualify as BOFPs; and

WHEREAS, further, Appellant's interpretation is also contrary to the statutory canons that provide that administrative agency interpretations are entitled to significant deference, that provisions should not be applied in a manner that would lead to absurd results and that provision should be read in harmony with other similar provisions; and

WHEREAS, the Board concludes that the Building is not a BOFP; and

FUEL IN PIPES AND HEADERS AND TANKS ON THE GROUND FLOOR

WHEREAS, Appellant argues that the Variance is infirm because: (1) it fails to take into consideration fuel within pipes and headers; and (2) it fails to take into account the multiple tanks on the ground floor of the building; and

WHEREAS, as to the first argument, Appellant's consultant argues that the 275 gallon limit per floor that is allowed as of right includes fuel in associated piping and headers; and

WHEREAS, DOB responds, and the Board agrees, that this requirement is part of Local Law 26, which was enacted in 2004, and that it is not a retroactive requirement that applies to the Building; and

WHEREAS, as to the second argument, another of Appellant's consultants contends in a letter dated August 13, 2006 that the Building has both a cellar and a sub-cellar and that the sub-cellar is the lowest story in the building; and

WHEREAS, the consultant contends that subsection (b)(1) of 27-829 specifically addresses tanks located inside of a building above the lowest story, which would include all tanks in the alleged cellar and first floor levels, since the word "story" is a defined term in the Building Code and includes sub-cellars; and

WHEREAS, the consultant concludes that DOB should have reviewed the cellar and first floor tanks when it issued the Variance, since these levels are above the lowest story (the sub-cellar); and

WHEREAS, first, the Board notes that the Building's certificate of occupancy indicates only a basement, not a cellar and sub-cellar; and

WHEREAS, further, DOB cites to the above-mentioned letter from DOB's Deputy Commissioner, dated August 30, 2006; and

WHEREAS, the Deputy Commissioner notes that 27-289(b)(1) uses the term "lowest story" while 27-289(b)(2) uses the term "lowest floor"; and

WHEREAS, the Deputy Commissioner notes that since 27-289 is inconsistent in its terminology, DOB applies an interpretation of the provision that best effectuates its purpose; and

WHEREAS, DOB states that it understands that the provision is designed to limit the amount of fuel above-grade (i.e. above the first or ground floor) in order to mitigate risk to firefighters and to enable easy access; and

WHEREAS, thus, DOB reads the provision to mean that the lowest floor or story is at grade; here, that is the first floor; and

WHEREAS, Building Code § 27-829(b)(1) and (2), as set forth in the Building Code, reads as follows (underlining added for emphasis):

> "b) Inside of building above the lowest floor. (1) Fuel oil storage tanks having a capacity of two hundred seventy-five gallons or less may be installed inside of buildings above the lowest story when provided with a four inch thick concrete or masonry curb, or with a metal pan of gauge equal to the gauge of the tank, completely surrounding the tank and of sufficient height to contain two times the capacity of the tank. The number of such oil storage tanks shall be limited to one per story. (2) Storage tanks having a capacity of two hundred seventy-five gallons or less, installed above the lowest floor inside a building shall be filled by means of a transfer pump supplied from a primary storage tank located and installed as otherwise required by this subchapter. A separate transfer pump and piping circuit shall be provided for each storage tank installed above the lowest floor. No intermediate pumping stations shall be provided between the storage tank and the transfer pump. Appropriate devices shall be provided for the automatic and manual starting and stopping of the transfer pumps so as to prevent the overflow of oil from these storage tanks."; and

WHEREAS, the Board agrees that these provisions, when read in their entirety, are inconsistent due to their interchangeable use of the words "story" and "floor"; and

WHEREAS, the Board also agrees that DOB appropriately applies an interpretation that effects the purpose of the provision; and

WHEREAS, finally, the Board notes that Appellant's consultant's interpretation would mean that only single fuel tanks with a 275 gallon maximum capacity would be permitted on any sub-cellar, cellar, basement, first floor, or above-grade level that is above another sub-cellar level; and

WHEREAS, the Board observes that such an interpretation is at odds with other parts of 27-829, such as subdivision (a), which addresses the location of tanks inside of buildings, above ground on the lowest floor, and subdivision (c), which addresses the location of tanks inside of buildings, below ground; and

WHEREAS, neither of these provisions refer to any restriction that the existence of a sub-cellar might have on above ground, lowest floor installations or below ground basement or cellar installations; and

WHEREAS, further, Appellant's consultant has not proffered any rationale as to why the existence of a sub-cellar (if one exists) should negate the ability to install tanks in a cellar or a basement level, as these provisions allow; and

WHEREAS, for the above reasons, the Board finds Appellant's consultant's argument unpersuasive; and

ADDITIONAL ARGUMENTS

WHEREAS, the following additional arguments were made either by Appellant or other parties: (1) the Board inappropriately conducted a site visit of certain portions of the Building without informing Appellant in advance or permitting Appellant to attend; (2) the total amount of fuel in the Building is being misrepresented by the Owner, as evidenced by documents generated by the State Department of Environmental Conservation; (3) the degree of the waiver is extreme and not in alignment with the Board's grants in the zoning variance context; (4) there is no comparability between the Building and others in the City; and (5) floor plans of the Affected Floor submitted by the Owner should not be kept confidential as per the Owner's request; and

Site Visit

WHEREAS, Board members and certain staff conducted a site visit of the Building on the afternoon of September 11, 2006; and

WHEREAS, the site visit was conducted pursuant to City Charter § 667 and the Board's Rules of Practice and Procedure § 1-03(d), which provide the authority for such visits; and

WHEREAS, the site visit was conducted in order to physically observe and confirm information already submitted into the record; and

WHEREAS, the visit was mentioned at the public hearing the following day in accordance with the prior plan of the Chair, and was the subject of a detailed site visit report prepared and distributed to the parties approximately one week after the visit; and

WHEREAS, the Board notes that none of its determinations herein rely upon or even cite to the site visit or the report, since nothing was observed on the site visit that was not already present in the record or that was not subsequently provided at hearing or through submissions; and

WHEREAS, the Board further notes that no deliberation amongst Board members occurred during the site visit, and that no determinations were made; and

WHEREAS, the site visit and report was also briefly discussed at the review session conducted on October 16, 2006, where it was confirmed by Board members that the report reflects what transpired on the site visit; and

WHEREAS, Appellant argues that the site visit was impermissible on the following grounds: (1) Appellant's due process rights were violated; and (2) the State's Open Meetings Law (the "OML") was violated; and

WHEREAS, as reflected above, the Board is not relying upon the site visit in rendering its decision on the instant appeal, and, through the report, disclosed to Appellant in detail what was observed and stated during the visit well in advance of Appellant's scheduled submission date of October 3, 2006 (which the Board notes was extended at the request of Appellant until October 12, 2006); and

WHEREAS, accordingly, the Board finds Appellant's concerns about due process unwarranted, especially in light of the three full special hearings that the Board conducted over the course of the public hearing process, which lasted nine months; and

WHEREAS, the Board notes that the City Charter and the Board's Rules provide it with the authority to conduct site visits, and further notes that neither the Charter nor the Rules contains any requirement that parties must be informed in advance or invited; and

WHEREAS, additionally, the Board is aware that site visits conducted by zoning boards are not violations of the OML (see Niagra Mohawk Power Corp. v. Public Service Commission, 54 A.D.2d 225 (1976); City of New Rochelle v. Public Service Commission, 150 A.D.2d 441 (1989); and Committee on Open Government Opinions OML-AO-2272, OML-AO-2578, OML-AO-3179, and OML-AO-3560); and

WHEREAS, finally, the precedent cited by Appellant in support of its OML argument (Rent Stabilization Ass'n of N. Y. C. Inc. v. Rent Guidelines Bd. for City of New York, 98 Misc.2d 312, 413 N.Y.S.2d 950 (N.Y.Sup. 1978)) is not on point; and

WHEREAS, in that case, the court considered the failure to notice and conduct a public hearing for which notice was required under the OML; and

WHEREAS, here, the Board did not conduct a public hearing, but rather went on a site visit; and

WHEREAS, Appellant also argues that the site visit report constitutes hearsay evidence because it was prepared by the Board's counsel; and

WHEREAS, assuming without conceding that the site visit report constitutes hearsay evidence, the Board nevertheless finds this argument irrelevant since hearsay is generally permissible before zoning boards and since the Board is not bound by rules of evidence applicable in courts of law; and

WHEREAS, further, the report was written based solely upon the input of those Board members and staff present at the site visit, and the Board concurred at the final review session that the report reflected what occurred on the visit; and

WHEREAS, accordingly, the Board rejects all of Appellant's arguments as to the site visit; and

DEC Documents

WHEREAS, during the course of the hearing process, Appellant argued that certain DEC documents appeared to contradict the Owner's assertions about the total amount of tanks and gallon capacity within the Building; and

WHEREAS, specifically, in its June 1, 2006 submission to the Board, Appellant alleges that certain DEC documents (attached as exhibits to the submission) establish that there are tanks larger than 275 gallons above grade not disclosed by the Owner and not considered by DOB; and

WHEREAS, the referenced DEC documents consist of spread sheets that reflect certain tanks within the Building and their capacity and DEC web-site print outs that reflect the same information; and

WHEREAS, based upon these documents, Appellant suggests that the Owner is failing to disclose to DOB and the Board additional tanks that may violate 27-829; and

WHEREAS, the Board suggested to the Appellant that it research with DEC the relevance of these documents and report back to the Board; and

WHEREAS, the Board also asked the Owner to address

the DEC documents; and

WHEREAS, subsequently, Appellant reported to the Board that DEC would not discuss the documents, and suggested that the Board contact DEC itself; and

WHEREAS, however, the Board observes that the Owner, in its August 23, 2006 submission, explained that DEC ascribed certain basement tanks to tenants on upper floors such that it appeared the tanks were actually located on the upper floors when in fact they were not; and

WHEREAS, the Owner explained that this occurred because DEC uses the mailing addressees of the tenants, which includes the floor number; and

WHEREAS, further, the Owner noted that not all tanks within the Building are subject to DEC regulation, due to their size; and

WHEREAS, the Board finds this explanation credible, and further observes that the Variance does not exempt the Owner and the tenants from compliance with all applicable state regulations, including those administered and enforced by DEC; and

WHEREAS, accordingly, the Board finds that further discussion or deliberation upon the DEC documents is unnecessary; and

The Degree of the Variance

WHEREAS, Council Member Gerson alleges that the Variance, which allows at least double the amount of permitted tanks on each of the Affected Floors, represents far more of a waiver than this Board would ever allow when considering a zoning variance application for floor area; and

WHEREAS, however, the Board observes that Building Code waivers, whether granted by DOB or the Board, are fundamentally different than zoning variances granted pursuant to Section 72-21 of the Zoning Resolution; and

WHEREAS, the Board notes that there is no explicit minimum variance requirement for a Building Code waiver, as there is for a zoning variance; and

WHEREAS, further, there is no evidence in the record suggesting that the Owner asked for more relief from 27-829 than was needed; and

WHEREAS, the fact that other floors aside from the Affected Floors possess generators connected by risers and pipes to tanks in the basement reinforces that the waiver of 27-829 was only requested to allow tanks on floors where practical difficulties prevented compliance with this Building Code section; and

WHEREAS, finally, the total amount of fuel stored above the first floor of the Building is actually less than is permitted as of right, which supports the contention that the Variance addresses precisely the existing practical difficulties within the Building, and is not over-reaching in any respect; and

WHEREAS, accordingly, the Board finds this argument unpersuasive; and

The Uniqueness of the Building

WHEREAS, during the course of the hearing process, the Board asked questions related to the following: (1) whether any other building had received a waiver of 27-829; (2) whether other buildings stored fuel above grade in day tanks; and (3) whether other buildings stored a comparable amount of fuel in total; and

WHEREAS, as to the first question, DOB acknowledges that this is most likely the first time that it has granted a waiver of 27-829; and

WHEREAS, however, the Board fails to see any significance in this fact, since there is no requirement in the Charter or the Building Code that DOB may only grant a variance of a provision if it granted one before; and

WHEREAS, as to the second question, while neither DOB nor the Appellant could provide an example of another building with above-grade fuel storage, the Board notes that the Building Code expressly allows for such storage as of right, and, depending on the amount of stories in a particular building, much more fuel could be stored as of right in a Class E building than is stored in the Building; and

WHEREAS, further, the Board notes that it did not direct Appellant's expert to ask DEC about comparable facilities to the Building, even though it appears that this is what Appellant subsequently did; and

WHEREAS, instead, the Board asked that Appellant's expert substantiate his claims that there were no other office buildings within the City where comparable quantities of fuel were stored, both below and above grade; this request was separate and apart from the request related to the DEC documents; and

WHEREAS, in sum, the Board concludes that the lack of specific examples of other buildings with above-grade storage in the record is irrelevant; and

WHEREAS, as to the third question, as noted above, FDNY inspected the Building and concluded that the amount of fuel in it is normal for a Class E building of its size; and

WHEREAS, the Board also notes that the use of commercial buildings for telecommunications occupancy is not uncommon in the City, and further notes that a neighbor who appeared in opposition to this appeal submitted a list of other buildings within the City occupied primarily by telecommunications companies; and

WHEREAS, in sum, the Board is now satisfied that the apparent singularity of the Building in terms of the Variance is not in of itself a concern and that the particular uses within the Building are found in other comparable facilities; and

Floor Plans

WHEREAS, in its final submission, the Owner submitted floor plans of the Affected Floors, and asked that the Board keep the plans confidential; and

WHEREAS, the Owner argues that the plans should not be made part of the public record because of security concerns; and

WHEREAS, however, Appellant requested that its attorneys, its experts, and its executive board have the ability to review the plans; and

WHEREAS, specifically, in a letter dated September 22, 2006, Appellant asked that the board officers (five individuals), Appellant's experts (three individuals) and Appellant's attorneys (three individuals) be allowed to review the plans; and

WHEREAS, at that point, Board staff became aware

that Appellant had received a full set of the plans in question already; and

WHEREAS, subsequent to this request, Board staff communicated with one of Appellant's attorneys and indicated that the plans could be disseminated and reviewed by the individuals identified in the September 22, 2006 letter, with the understanding that they would be kept confidential and not be more widely distributed; and

WHEREAS, at that juncture, Appellant's attorney sent a draft confidentiality agreement to Board staff that was proposed to be executed by the identified individuals; and

WHEREAS, Appellant's final submission indicates that the plans were in fact reviewed; and

WHEREAS, however, instead of including an executed confidentiality agreement, the Appellant argued that the Board should make the plans public and not keep them confidential, pursuant to the Freedom of Information Law ("FOIL"); and

WHEREAS, Appellant also argues that the Owner's desire to keep the plans confidential undercuts any argument that the Building is safe, with or without the Variance; and

WHEREAS, the Board finds that it is unnecessary to resolve the issue of whether the plans should be kept confidential pursuant to an exemption under FOIL in order to render a determination on the instant appeal, since Appellant's attorneys, experts, and executive board have had the opportunity to review the plans and comment upon them, based upon the Board staff's communication of this ability to Appellant's attorney and as evidenced by the Appellant's last submission; and

WHEREAS, further, the Board disagrees that a desire to keep the floor plans confidential is fundamentally at odds with a general conclusion that the Building is safe; and

WHEREAS, Appellant has not offered any explanation for its position in this regard; and

WHEREAS, the Board is aware that the plans for certain buildings within the City are kept confidential by DOB; and

WHEREAS, this does not mean that the buildings are unsafe or that they do not comply with the Building Code or achieve the safety goals of the Building Code, rather, it is a general security matter, related to the importance of particular buildings in general; and

WHEREAS, further, as explained by the Owner in a submission dated October 13, 2006, DOB restricts access to certain building's plans, application and filings due to security considerations, including those related to the Building; and

WHEREAS, finally, the Board notes that to the extent a formal FOIL request is made for the plans, such request will be considered in light of all provisions of FOIL, and any denial of such a request may be challenged in accordance with existing law; and

CONCLUSION

WHEREAS, in sum, the Board is not persuaded that any of the arguments made by Appellant or other parties as discussed above have any merit or require the nullification of the Variance; and

WHEREAS, accordingly, it upholds DOB's issuance of the Variance, with modifications as set forth below.

Therefore it is Resolved that: (1) the instant appeal, seeking a reversal of the determination of the Commissioner of the Department of Buildings, dated June 27, 2005, is hereby denied, and (2) that the determination is modified pursuant to City Charter § 666(7)(c) to the extent that the following conditions shall be added:

"There shall be no storage of excess fuel in 55 gallon drums in the basement or anywhere else within the building;

Within six months of October 17, 2006, a ventilation, climate control or other cooling system will be installed (if one does not exist already) in each generator enclosure room, and the temperature in each such enclosure room will be monitored and maintained at under 100 degree Fahrenheit";

and to the extent that the part of condition no. 4 in the determination that reads: "Excess fuel may be stored in the basement in an approved area or storage room but only to the extent of one 55-gallon drum per generator whose fuel tank is manually filled" shall have no effect.

Adopted by the Board of Standards and Appeals, October 17, 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: Madeleine Fletcher.

For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; 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 October 17, 2006; and

WHEREAS, the site was inspected by a committee of the Board including Chair Srinivasan; and

WHEREAS, Community Board 14, Brooklyn,

recommends approval of this application; and

WHEREAS, the subject premises consists of one lot on the northeast corner of East 15th Street and Avenue P; and

WHEREAS, the subject premises is located within an R5B zoning district; and

WHEREAS, the subject premises is proposed to be developed with a six-story community facility building; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Midwood rezoning proposal, which changed the zoning district from R6 to R5B, rendering the development non-complying as to FAR and height; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

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

WHEREAS, the applicant represents that the relevant Department of Buildings' permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on November 25, 2005 a new building permit (Permit No. 301898114, hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; the permit was renewed on April 5, 2006; and

WHEREAS, the Board has reviewed the record and agrees that the NB Permit was lawfully issued to the owner of the subject premises; and

WHEREAS, the applicant represents that because the Metropolitan Transit Authority (MTA) railroad tracks are located within 24 feet of the subject premises, MTA approval was required before construction could begin; and

WHEREAS, MTA approval was obtained on November 30, 2005; and

WHEREAS, the applicant represents that MTA required extensive modification of the foundation plan and required additional measures during excavation and demolition including supplemental concrete footings; and

WHEREAS, the applicant represents that, as of the Rezoning Date, excavation had been completed and substantial progress had been made on foundations; and

WHEREAS, the applicant represents that shoring and underpinning of the adjacent property began on March 3, 2006; and

WHEREAS, after an inspection by an MTA engineer, the underpinning was completed on March 17, 2006; and

WHEREAS, the applicant represents that approximately 75 percent of the foundation was completed by March 24, 2006; and

HEREAS, the applicant submitted photographs in support of this assertion and notes that the MTA shoring plan required that the excavated foundation be partially backfilled to allow the special drilling machine to maneuver; and

HEREAS, the applicant represents that complications with the special drilling device delayed drilling; however, it was recommenced on April 4, 2006; and

WHEREAS, the applicant represents that, by April 5, 2006, approximately 85 percent of the foundation had been completed; and

WHEREAS, in support of the contention that the specified amount of work has been completed, the applicant has submitted affidavits from a representative of the construction company that performed the foundation work, the construction manager, two of the owners, the site engineer, and a representative of the construction company that performed the demolition and excavation documenting the status of said completion; and

WHEREAS, the applicant has also submitted photographs of the site and a color-coded copy of the foundation plan depicting the extent of work done on the foundation; the latter is signed and sealed by a professional architect; and

WHEREAS, in support of the contention that 209.65 cubic yards of concrete were poured between March 2 and March 22, 2006, the applicant has submitted pour tickets from a concrete batching company, reflecting the claimed amount of concrete pours; and

WHEREAS, the applicant represents that the only remaining work on the foundation is the additional shoring required by the MTA on the east side of the property; and

WHEREAS, the applicant has submitted a "work-performed" table detailing the amount of work that has been completed; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables that indicate that more than 75 percent of the cost of completing the foundation had been incurred as of the Rezoning Date; and

WHEREAS, at hearing, the Board asked the applicant if any work was completed during periods when a stop work order (SWO) was in effect; and

WHEREAS, the applicant responded that no work was performed when an SWO was in effect, other than the stabilization of the overhead railroad as required by the MTA and DOB; and

WHEREAS, however, DOB states that it issued three violations which included SWOs; and

WHEREAS, these SWOs were issued on the following dates: 1) March 28, 2006 for failure to protect adjoining structures during excavation (effective until March 31, 2006); 2) April 3, 2006 for operation of mechanical equipment in an unsafe manner (this remains in effect); and 3) April 7, 2006 in response to the rezoning; and

WHEREAS, therefore, the Board has not considered the work performed between March 28 and March 31, 2006 or after April 3, 2006; and

WHEREAS, however, after reviewing the affidavits and the other evidence submitted, the Board agrees with the conclusion that at least 75 percent of foundation work was lawfully completed as of April 3, 2006; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, accordingly, the Board finds that excavation was complete and that substantial progress had been made on the foundation, and additionally, that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is resolved that this application to renew New Building permit No. 301898114 pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on April 17, 2007.

Adopted by the Board of Standards and Appeals, October 17, 2006.

91-06-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 24, 2006, acting on Department of Buildings Application No. 402270573, 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 October 17, 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 12, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 31, 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 April 24, 2006, acting on Department of Buildings Application No. 402270573 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, October 17, 2006.

101-06-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated May 5, 2006, acting on Department of Buildings Application No. 402366211, 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 October 17, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated June 9, 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 September 12, 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 May 5, 2006, acting on Department of Buildings Application No. 402366211 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 23, 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, October 17, 2006.

179-06-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Maria Danzilo & Richard Lehv, lessee.

SUBJECT – Application August 17, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street which is contrary to Article 3, Section 36 of the General City Law. Premises is located within the R 4 zoning district.

PREMISES AFFECTED – 11 Beach 220th Street, east side Beach 220th Street, 249.72' north of 4th Avenue, Block 16350, Lot 400, 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, Commissioner Collins and Commissioner Ottley-Brown.....4

Negative:.....0

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 11, 2006, acting on Department of Buildings Application No. 402428556, reads in pertinent part:

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

a) A Certificate of Occupancy may not be issued as 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 is contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on October 17, 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, 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 August 11, 2006, acting on Department of Buildings Application No. 402428556 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 17, 2006" one (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, October 17, 2006.

63-06-A
APPLICANT – Sheldon Lobel, P.C.,
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application April 11, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building Code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Jay Segal.
For Opposition: Margerie Perlmutter
For Administration: Felicia Miller, Department of Buildings.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

81-06-A
APPLICANT – Whitney Schmidt, Esq.
OWNERS: Kevin and Alix O'Mara
SUBJECT – Application May 2, 2006 – Appeal seeking to revoke permits and approvals which allows an enlargement to an existing dwelling which violates various provisions of the Zoning Resolution and Building code regarding required setbacks and building frontage.
PREMISES AFFECTED – 160 East 83rd Street, Lexington Avenue and Third Avenue, Block 1511, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Whitney Schmidt.
For Opposition: Margerie Perlmutter.
For Administration: Felicia Miller, Department of Buildings.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for decision, hearing closed.

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

THE VOTE TO REOPEN HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

154-06-A
APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.
SUBJECT – Application July 12, 2006 - An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.
PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Howard Hornstein and Peter Geis.
For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for continue hearing.

155-06-A
APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.
SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.
PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Howard Hornstein and Peter Geis.
For Administration: Amandus Derr, Department of Buildings.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for continue hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 1:00 P.M.

REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 17, 2006
1:30 P.M.

Present: Chair Srinivasan, Vice Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.

ZONING CALENDAR

290-02-BZ thru 314-02-BZ
374-03-BZ thru 376-03-BZ
APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Edgewater Development, Inc., owner. (Tapei Court)
SUBJECT – Application October 24, 2002 – under Z.R. §72-21 – to permit the construction of 28 attached, three-story and cellar, two-family dwellings on a vacant site. The subject site is located in an M1-1 zoning district. The proposal would create 56 dwelling units and 56 parking spaces. The 28 proposed dwellings are intended to be part of a larger and substantially complete development which is located within the adjacent C3 zoning district. The proposed project has been designed to conform and comply with the C3 district regulations that govern the remainder of the subject property and which permits residential development in accordance with the C3 district's equivalent R3-2 zoning district regulations (pursuant to Sections 32-11 and 34-112). The development as a whole is the subject of a homeowners' association that will govern maintenance of the common areas, including the parking area, driveways, planted areas and the proposed park. The proposal is contrary to applicable use regulations pursuant to Z.R. Section 42-10.
PREMISES AFFECTED – 114-01/03/05/07/09/11/13/17/19/15/21/21/23/25/27/29/31/33/35/20/22/24/26/28/30/32/34 Taipei Court, west of 115th Street, Block 4019, Lot 120, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –

For Applicant: Adam Rothkrug.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 24, 2002, acting on Department of Buildings Application No. 401208135, reads in pertinent part:

"Proposed residence (UG2) in an M1-1 zoning district is contrary to Section 42-10 ZR and must be referred to the Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a zoning lot partially located within an M1-1 zoning district and partially located within a C3 zoning district, the construction of 28 three-story two-family homes on the M1-1 portion of the lot, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in the *City Record*, with continued hearings on June 6, 2006, July 18, 2006, August 22, 2006, and September 26, 2006, and then to decision on October 17, 2006; and

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

WHEREAS, Community Board 7, Queens, initially opposed this application in February of 2003, but in a further report from August of 2006, now supports it because the M1-1 portion is landlocked; and

WHEREAS, the subject premises is a large zoning lot, part of which is underwater, located in the College Point neighborhood of Queens; the site is located on the west side of 115th Street in Queens and is adjacent to the East River; and

WHEREAS, the total lot area (based on the upland portion of the lot) is 496,604 sq. ft.; and

WHEREAS, 352,279 sq. ft. of the site is within the C3 portion of the zoning lot and 144,325 sq. ft. is within the M1-1 portion; and

WHEREAS, the M1-1 portion is currently vacant; and

WHEREAS, the M1-1 portion does not have either direct frontage or access to 115th Street: it borders the East River to the west, and is adjacent to the C3 portions of the site to the north and east; and

WHEREAS, the part of the C3 portion of the zoning lot adjacent and directly to the east of the M1-1 portion is currently developed with 31 two-family homes (hereinafter, "Taipei Court"); and

WHEREAS, another part of the C3 portion of the lot to the north of the M1-1 portion is currently developed with 58 two-family homes (hereinafter, "Dalian Court"); and

WHEREAS, the Board notes that residential development is as of right in a C3 zoning district; this district has an R3-2 residential district equivalency; and

WHEREAS, the applicant notes that an additional lot adjacent to and to the southeast of the site (Lot 60) will be purchased by the developer and developed as a park area, open to the public; and

WHEREAS, as discussed in more detail below, when this application was initially filed, the applicant only presented to the Board the M1-1 portion, and did not discuss the entire zoning lot in terms of unique physical hardship, the feasibility of conforming development or environmental assessment; and

WHEREAS, at the direction of the Board, the applicant subsequently modified the application and the related materials to consider the entire zoning lot; and

WHEREAS, on the M1-1 portion, the applicant proposes to construct 28 three-story two-family homes with cellars, with 56 accessory parking spaces (one for each dwelling unit) and 12 visitor parking spaces (for a total of 68 parking spaces); and

WHEREAS, this development is proposed to be part of the existing Taipei Court project, and a homeowner's association will govern the entire development; and

WHEREAS, access for the 28 proposed homes to and from 115th Street will be provided through that part of the Taipei Court project within the C3 district; and

WHEREAS, each of the proposed homes will be on a separate tax lot and each will have a separate street address; and

WHEREAS, each home will be 20 ft. wide by 40 ft. deep, with a total floor area of 2,400 sq. ft.; and

WHEREAS, the combined floor area of all 28 homes is 67,200 sq. ft. (a Floor Area Ratio of 0.47); and

WHEREAS, all other bulk parameters, such as yards, building height, and lot coverage, will comply with C3 district regulations; and

WHEREAS, additionally, the development will comply with the requirements for sidewalks, curbs, street width, planting, and open space set forth in the Special Requirements for Developments with Private Roads regulations (ZR § 26-20, *et seq*.); and

WHEREAS, the applicant also notes that the development has received approval from the State Department of Environmental Conservation (DEC) as required due to its proximity to a tidal wetland; and

WHEREAS, this approval requires substantial planting along the East River bank and installation of a four feet high fence; and

WHEREAS, the applicant further notes that the proposed development complies with the Special Waterfront zoning regulations (set forth at ZR § 62-00, *et seq*.) and will provide the required visual corridor, to be approved by the City Planning Commission (CPC); and

WHEREAS, finally, the applicant states that after the application was filed in 2002, the Department of City Planning (DCP) proposed a rezoning of the College Point neighborhood, and it was anticipated that the M1-1 portion would be rezoned to C3; however, this did not occur, thus necessitating that the application be prosecuted; and

WHEREAS, the applicant initially stated that the

following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with the applicable use regulations: (1) the M1-1 portion of the site is landlocked, and only has access through the C3 district portion; (2) the site is partly underwater, and the underwater lot area cannot be utilized; (3) the site has poor soil that would require piles installation; and (4) the site is within an existing tidal wetlands area as designated by DEC; and

WHEREAS, as to the first argument, the applicant claims that access to the M1-1 portion, which is landlocked, is not feasible given the existing Taipei Court residential development; and

WHEREAS, however, as noted above, the applicant's discussion of hardship initially only related to the M1-1 portion; and

WHEREAS, pursuant to ZR § 72-21(a), the analysis of unique physical conditions must relate to the entire zoning lot and not just a portion thereof; and

WHEREAS, the Board questioned whether the landlocked nature of the M1-1 portion in of itself caused any hardship, and noted that this impedes conforming development only because of the decision to commence and complete development of the C3 portion with residential uses, thereby limiting the ability to access the M1-1 portion; and

WHEREAS, accordingly, the Board asked the applicant to analyze the entire zoning lot as if it were undeveloped; and

WHEREAS, in response, the applicant states that even when considering the entire zoning lot, the presence of the district boundary line still compromises conforming development; and

WHEREAS, the applicant states that since access may only be gained through the C3 portion, any permitted manufacturing use would need to conform to both the M1-1 and C3 district regulations; and

WHEREAS, the applicant claims that the universe of such uses is limited to Use Group 14 "special services and facilities required for boating and related activities"; and

WHEREAS, the applicant claims that this use is not economically feasible, even if more than one such facility is built; and

WHEREAS, the Board agrees that the presence of the district boundary line and the M1-1 portion's lack of street frontage compromises the ability to develop the zoning lot with conforming uses in its entirety; and

WHEREAS, as to the second basis, the Board notes that any alleged hardship that arises due to a portion of the site being underwater is compensated for by a reduction in site value and an increase in sell out value (due to the waterfront proximity and views); and

WHEREAS, further, the Board notes that it has reviewed other variance applications involving waterfront properties, and it has not credited any argument that a hardship exists merely because a percentage of the total lot area is underwater; and

WHEREAS, thus, the Board rejects the applicant's second claimed basis of uniqueness; and

WHEREAS, as to the third basis, the applicant states that the site was created through a landfill and is adjacent to the East River, and as a result has porous soil; and

WHEREAS, the applicant claims that because of this porous soil, a manufacturing building would have to be built on a piles foundation system, which would greatly increase construction costs; and

WHEREAS, the applicant claims that these costs could not be recouped from the anticipated rent for such a building; and

WHEREAS, as to the fourth basis, the applicant claims that the DEC approval requires installation of fencing and planting in order to protect the existing tidal wetlands area, which also increases overall development costs; and

WHEREAS, based upon the above, the Board finds that certain unique physical conditions inherent to the subject zoning lot, namely, the presence of an M1-1/C3 district boundary line and the M1-1 portion's lack of street access, the site's soil conditions, and the DEC-imposed requirements, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable use regulation; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: a conforming one-story manufacturing/commercial building on the M1-1 portion; and

WHEREAS, the applicant concluded that such a scenario would result in a loss; and

WHEREAS, however, the Board notes that this study incorrectly assumed that only the M1-1 portion of the site needed to be analyzed; and

WHEREAS, accordingly, during the hearing process, the Board required the applicant to revise the feasibility analysis to encompass the entire zoning lot; and

WHEREAS, in a further submission, the applicant provided an analysis of a new conforming scenario; specifically, development of the entire zoning lot with a one-story manufacturing/commercial building on the M1-1 portion and 63 three-story, two-family buildings on the C3 portion; and

WHEREAS, however, this revised study failed to take into account the M1-1 zoning; instead, it valued the entire zoning lot as if it were zoned for as-of-right residential use, using only residentially zoned comparables for the valuation; and

WHEREAS, the Board noted that this error impermissibly overstated the value of the site; and

WHEREAS, in response, the applicant submitted a revised study, which accurately valued the zoning lot based upon both residential and manufacturing comparables; and

WHEREAS, finally, the Board observes that while the conforming scenario presented a building that was under-built in terms of floor area, a full build out for a UG 14 use would not make economic sense, leaving a smaller development as the only reasonable alternative; and

WHEREAS, given that the M1-1 portion of the site would be under-built, the Board concurs that a conforming scenario over the entire zoning lot would not realize a reasonable return; and

WHEREAS, based upon the above, the Board has

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

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

WHEREAS, as to the proposed residential use, the Board observes that the subject site is adjacent to existing residential uses (Dalian Court and the first component of Taipei Court), and is surrounded by zoning districts where residential use is permitted; and

WHEREAS, the Board finds that the introduction of 56 dwelling units in this neighborhood will not affect its existing residential character; and

WHEREAS, as to the proposed bulk, the Board notes that the development is designed to be compatible with the existing Dalian and Taipei Court developments, and that the bulk over the entire zoning lot in all respects complies with C3 regulations; and

WHEREAS, finally, at the request of the Board, the applicant revised the parking layout so that each dwelling unit will have one accessory parking space and twelve visitor spaces will be provided; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather the result of the above-mentioned unique physical conditions inherent to the entire zoning lot; and

WHEREAS, in addition to analyzing the above-mentioned conforming scenario and the proposal, the applicant also analyzed the following lesser variance scenario: development of the M1-1 portion with a manufacturing building, and development of the C3 portion with 120 three-story, single-family homes; and

WHEREAS, upon its initial review of this lesser-variance scenario, the Board questioned whether the inclusion of cellars in each of the proposed buildings contributed to the overall development costs and exacerbated the degree of alleged hardship; and

WHEREAS, the applicant responded that due the poor soil conditions and the need to install piles, construction of cellars did not impose a significant additional economic burden as to the cost of construction; and

WHEREAS, additionally, the Board noted that the sell-out values ascribed the single-family homes appeared to be low, and asked the applicant to make an upwards adjustment to these values; and

WHEREAS, in response, the applicant made such an adjustment, but still concluded that a single-family proposal would not realize a reasonable return, because only the revenue from the two-family development scenario would create sufficient income to overcome foundation and DEC-related costs and make the project feasible; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 03BSA066Q, dated February 9, 2004; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot partially located within an M1-1 zoning district and partially located within a C3 zoning district, the construction of 28 three-story two-family homes on the M1-1 portion of the lot, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 5, 2006"-(8) sheets; and *on further condition*:

THAT approval of the waterfront view corridor will be obtained from CPC prior to issuance of any building permit;

THAT all fencing and planting as required by DEC and as indicated on the BSA-approved plans shall be installed and maintained;

THAT accessory and visitor parking shall be provided 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, October 17, 2006.

291-05-BZ

APPLICANT – Eric Palatnik, P.C. for Rallaele DelliGatti, owner.

SUBJECT – Application September 22, 2005 – Pursuant to ZR 72-21 for a Variance to allow for the demolition of an existing single family residence and its re-development with a new single family residence which has less than the required front yard, ZR 23-45. The premise is located in an R-2A zoning district.

PREMISES AFFECTED - 10-33 Burton Street, Burton Street between 12th Avenue and 12th Road, Block 4607, Lot 26, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2006, acting on Department of Buildings Application No. 402171555, reads in pertinent part:

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

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2A zoning district, the proposed construction of a two-story with cellar single-family home that does not provide one of the two front yards required for a corner lot, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on August 15, 2006 after due notice by publication in *The City Record*, to continued hearing on September 26, 2006, and then to decision on October 17, 2006; and

WHEREAS, Community Board 12, Queens, and the Borough President recommend approval of this application; and

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

WHEREAS, the site is on the east side of Burton Street, at the corner of Burton Street and 12th Avenue; Burton Street forms a dead end at 12th Avenue; and

WHEREAS, the site has a lot area of 4,861.5 sq. ft., with a width of 45.89 ft. and a depth of 105.94 ft.; and

WHEREAS, the applicant states that the lot has existed in its present configuration since before 1961; and

WHEREAS, the site is currently occupied with a two-story single-family home, which the applicant represents dates back to the early 1900's; and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story single-family home, with one off-street parking space; and

WHEREAS, the proposed home will have a perimeter wall height of 20.92 ft., a total height of 32.44 ft., a floor area of 2,422.2 sq. ft., an FAR of 0.5, one side yard of 5 ft., one side yard of 30.67 ft., and one parking space; and

WHEREAS, the proposed home complies with all R2A zoning district regulations except required front yards; and

WHEREAS, specifically, one front yard of 8.92 ft. along 12th Avenue and one front yard of 24.75 ft. along Burton Street are proposed (two 15 ft. front yards are the minimum required); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: 1) the narrow width of the lot in combination with its location as a corner lot would result in a home out of character with the established context of homes in the surrounding area; and 2) the obsolescence and underbuilt character of the existing 100-year-old home; and

WHEREAS, as to lot width and corner location, the applicant reviewed 40 lots occupied by 39 homes within the three-block area bounded by Utopia Parkway, 166th Street, 12th Avenue, and 12th Road; and

WHEREAS, the applicant represents that of the 40 lots, 32 have widths greater than 46 feet (the width of the subject lot); and

WHEREAS, of the eight lots that are 46 feet in width or narrower, only two other lots are corner lots; and

WHEREAS, the applicant asserts that due to the size and corner location of the lot, a home built in compliance with front yard regulations would be narrow in width; and

WHEREAS, specifically, the applicant represents that the redevelopment of the site would restrict the width of the home to approximately 27 feet; and

WHEREAS, the applicant submitted plans for an as of right development which support this assertion; and

WHEREAS, the applicant notes that a home of only 27 feet would confine the width of the living room, dining room, and bedrooms and result in a uniquely narrow home in relation to those in the immediate vicinity; and

WHEREAS, the applicant notes that 26 of the 39 homes

in the study area have a building width greater than 33 feet (the approximate width of the proposed home) and that of the 13 homes with narrower widths, only ten have a width of 30 feet or less; and

WHEREAS, the Board notes that of the 39 homes within the study area, only three have widths of 27 feet or narrower; and

WHEREAS, as to obsolescence, the applicant claims that the existing 100-year-old 1,302.78 sq. ft. home is very small and does not meet modern standards of habitability; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions, when considered in the aggregate, create practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

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

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

WHEREAS, the applicant states that a complying 24.75 ft. front yard will be provided along Burton Street where the front of the home will be located and where there is a context for complying front yards; and

WHEREAS, the applicant notes that the existing home has a legally non-complying front yard along 12th Avenue where Burton Street ends; and

WHEREAS, the applicant states that the proposed front yard along 12th Avenue is 2'-4" greater than the existing one; the existing front yard is 6.62 feet and the proposed yard is 8.92 feet; and

WHEREAS, the applicant further states that the proposed front yard along 12th Avenue is similar in depth to those provided by the other corner properties on Burton and Totten Streets, with frontage on 12th Avenue; and

WHEREAS, there is also a fence at the end of Burton Street, which blocks pedestrian and vehicle access to 12th Avenue; and

WHEREAS, because Burton Street is blocked and does not connect to 12th Avenue, there is no context for front yards along this portion of 12th Avenue where the front yard waiver is proposed; and

WHEREAS, the applicant represents that there are at least three non-complying front yards of the six corner lots fronting on 12th Avenue within the study area; and

WHEREAS, the applicant submitted photographs and land use maps that support the above representations; and

WHEREAS, additionally, as discussed above, the proposed home is comparable in width to the homes within the immediate vicinity and is within the 0.5 FAR permitted in the R2A zoning district; and

WHEREAS, the Board also notes that the absence of one complying front yard will not negatively impact the adjacent uses as the proposed home will provide a complying 5 ft. side yard along the property line of the residence to the south and a complying 30.67 ft. side yard at the rear of the home along the property line of the residence to the east; and

WHEREAS, the Board also agrees that the location of the home on the lot is consistent with the context along 12th Avenue, as there is a fenced off dead end along 12th Avenue with parking on the other side; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R2A zoning district regulations except for one required front yard; and

WHEREAS, initially, the applicant submitted plans for a home positioned further towards the north, which provided a narrower front yard along 12th Avenue; and

WHEREAS, at hearing, the Board asked the applicant if the home could be positioned further towards the south so that a slightly deeper front yard could be provided along 12th Avenue as well as a complying side yard; and

WHEREAS, in response, the applicant submitted revised plans which provide for a front yard along 12th Avenue that is 1'-7" deeper than the one initially proposed; and

WHEREAS, the Board also notes that the currently proposed front yard along 12th Avenue is 2'-4" deeper than the existing non-complying front yard; and

WHEREAS, additionally, the Board notes that the dimensions of the proposed home, including the width of approximately 33 feet, are comparable to those of the existing home; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R2A zoning district, the proposed construction of a two-story with cellar single-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 12, 2006"– (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.5; a floor area of 2,422.2 sq. ft.; one front yard of 8.92 ft., along 12th Avenue; one front yard of

24.75 ft., along Burton Street; one side yard of 5 ft.; and one side yard of 30.67 ft.;

THAT one off-street parking space shall be provided as indicated on the BSA-approved plans;

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

THAT there shall be no habitable room in the cellar;

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, October 17, 2006.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2006, acting on Department of Buildings Application No. 302057002, reads, in pertinent part:

"1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio which is contrary to ZR Section 54-31 and 23-141(b).
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and coverage which is contrary to ZR Section 54-31 and 23-141(b).
3. Proposed enlargement results in two side yards less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47 and 54-31."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006 and September 19, 2006, and then to decision on October 17, 2006; and

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

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

WHEREAS, certain neighbors provided testimony in support of this application; and

WHEREAS, however, certain neighbors provided testimony in opposition to this application citing concerns about access to light and air and the preservation of the character of the block; and

WHEREAS, the subject lot is located on the west side of East 14th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by a 1,086 sq. ft. (0.434 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 1,086 sq. ft. (0.434 FAR) to 2,600.09 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 46 percent to 55 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,350 sq. ft. to 1,120.03 sq. ft. (the minimum required open space is 1,375 sq. ft.); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 3'-9 ½" and 2'-10 ¼" (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

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

WHEREAS, the proposed enlargement will reduce the

rear yard from 34'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, both the proposed perimeter wall height of 21'-0" and the total height of 31'-0" comply with district regulations; and

WHEREAS, initially, the applicant proposed a building with a perimeter wall height of 25'-0" and a total height of 35'-0"; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed height; and

WHEREAS, the applicant submitted a streetscape which illustrates that the street is occupied primarily with older one-story bungalows and a small number of newer two- and three story homes; and

WHEREAS, the applicant also submitted photographs of buildings in the vicinity and information about their bulk parameters; and

WHEREAS, the Board notes that buildings in the general vicinity include large multiple-unit dwellings and a number of two- and three-story homes; and

WHEREAS, however, in consideration of the context of the subject block, the Board asked the applicant to reduce the height; and

WHEREAS, specifically, the Board suggested that the floor to ceiling height of the second floor be reduced from 16 feet; and

WHEREAS, the applicant revised the plans to show a second floor height of 12'-4 ½", which resulted in the total height being reduced from 35'-0" to 31'-0"; and

WHEREAS, the Board notes that the as-of-right enlargements of nearby homes have resulted in homes with 21 ft. wall heights and 31 ft. total heights, with the exception of one with a height of 35 feet; 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, the Board also notes that the lot is within an R4 zoning district and that the FAR request is reasonable, given that an FAR of 0.9 is permitted as of right; 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 Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that the foundation and first floor side walls, and the first floor will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and floors would remain; and

WHEREAS, additionally, the Board asked the applicant to remove the parking area from the plans; and

WHEREAS, Board finds that 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 R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; *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 September 5, 2006"–(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall be used for household storage only;

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 2,600.9 sq. ft., a total FAR of 1.04, a perimeter wall height of 21'-0", and a total height of 31'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A2, A3, A4, A5-1, and A6, stamped September 5, 2006;

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

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

THAT the front porch 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, October 17, 2006.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 7, 2005, acting on Department of Buildings Application No. 402156279, reads in pertinent part:

"1. Proposed front yard is contrary to Section 23-45 of the Zoning Resolution and requires a variance from the Board of Standards and Appeals."; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story with cellar two-family home that does not provide one of the two front yards required for a corner lot, contrary to ZR § 23-45; 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 decision on October 17, 2006; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

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

WHEREAS, the site is on the northwest corner of 153rd Street and 110th Avenue; and

WHEREAS, the lot is 25.7 ft. in width along 153rd Street, and 100 ft. in depth along 110th Avenue, with a total lot area of 2,570 sq. ft.; and

WHEREAS, the applicant states that the lot has existed in its present configuration since prior to 1961; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant represents that available records indicate that the site was formerly improved upon with a building constructed around 1926; and

WHEREAS, this building was demolished pursuant to a 1984 Unsafe Building violation and a 1985 demolition application; and

WHEREAS, the applicant proposes to construct a two-story, two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will be 27'-5" high with two stories and have a total floor area of 2,312.07 sq. ft., a total FAR of 0.9, one side yard of 20'-2", one side yard of 5'-0", and two parking spaces; and

WHEREAS, the proposed home complies with all R4 zoning district regulations except required front yards; and

WHEREAS, specifically, one front yard of 2 ft. and one front yard of 18 ft. are proposed (one front yard of 10 ft. and one front yard of 18 ft. are required); and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject corner lot is narrow, which is in part the result of the widening of 110th Avenue; and

WHEREAS, the applicant claims that the subject lot is the narrowest corner lot of the nine corner lots within a 200-ft. radius; and

WHEREAS, further, the applicant represents that the subject lot is the only vacant corner lot wholly within the radius; there is another vacant lot just beyond the radius, which has a width of 100 feet; and

WHEREAS, the applicant has submitted a 200-ft. radius diagram that supports these assertions; and

WHEREAS, the applicant also submitted a Sandborn map that includes five intersections along 153rd Street between 109th Drive and 111th Road; and

WHEREAS, the map includes 18 corner lots of which only two are narrower than the subject lot; and

WHEREAS, the map shows that there are no other vacant corner lots within this extended study area other than the large one at the corner of 153rd Street and 110th Road, discussed above; and

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

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 25.7 ft. wide and 100 ft. deep – cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant

submitted plans for a complying building, which would have an exterior width of only 10.7 ft. if front yard regulations were complied with fully; and

WHEREAS, the applicant represents that the narrow width of the lot is the result of a street widening of 110th Avenue; and

WHEREAS, the applicant notes that 110th Avenue was only 50 ft. wide at the time the prior dwelling at the site was constructed; and

WHEREAS, however, the subsequent street widening significantly reduced the width of the subject lot; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width, while still providing a side yard that would provide sufficient distance between the proposed home and the neighboring home to the north; and

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

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

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

WHEREAS, the applicant states that a complying 18 ft. front yard will be provided along 153rd Street, which has a residential context; and

WHEREAS, further, the applicant states that a second front yard of 2 ft. will be provided along 110th Avenue, which has a commercial context; and

WHEREAS, the applicant notes that the adjacent site along 110th Avenue, the sites around the corner on Sutphin Boulevard, and the entire block across 110th Avenue are in either C2-2 (R4) or C1-2 (R3-2) zoning districts that do not have a front yard requirement; and

WHEREAS, the applicant represents that many of the existing buildings in the surrounding area were developed prior to 1961 when the current yard regulations were enacted and, thus, many of them have non-complying yards; and

WHEREAS, the applicant submitted photographs, Sandborn maps, and the radius diagram, which supports the above representations; and

WHEREAS, the Board notes that the non-complying front yard will not negatively impact the adjacent use to the west along 110th Avenue (a gasoline service station); and

WHEREAS, the Board agrees that the location of the home on the lot and the non-complying front yard are consistent with the context along 110th Avenue, a commercial district which permits and is occupied by a number of buildings built to the front lot line; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions and street widening; and

WHEREAS, as noted above, the applicant complies with all R4 zoning district regulations except for one of the required front yards; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21, to permit, within an R4 zoning district, the proposed construction of a two-story with cellar two-family home that does not provide one of the two required front yards for a corner lot, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 2, 2005"– (4) sheets and "October 4, 2006"– (1) sheet ; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: an FAR of 0.9; a floor area of 2,312.07 sq. ft.; 1,413.97 sq. ft. of open space; one front yard of 2 ft., one front yard of 18 ft., one side yard of 20'-2", and one side yard of 5 ft.;

THAT two off-street parking spaces shall be provided as indicated on the BSA-approved plans;

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

THAT there shall be no habitable room in the cellar;

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, October 17, 2006.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.

SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling

containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.

PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 29, 2006, acting on Department of Buildings Application No. 500740665, reads in pertinent part:

"Proposed floor area is contrary ZR 23-141
Proposed building height is contrary to ZR 23-631
Proposed width of driveway is contrary to ZR 25-622
Proposed width of curb cut is contrary to ZR 25-632";
and

WHEREAS, this is an application under ZR § 72-21, to permit within an R3-2 zoning district within the Special Hillside Preservation District (HS), the construction of a three-story, 40 ft. high 25-unit Use Group 2 multiple dwelling for adults age 55 and over, with a floor area of 24,542 sq. ft., a Floor Area Ratio (FAR) of 0.95 and 38 accessory parking spaces, which does not comply with zoning requirements for total and residential floor area, street wall height, total height, and curb cut and driveway width, contrary to ZR §§ 23-141, 23-631, 25-622 and 25-632; and

WHEREAS, initially, the applicant proposed a four-story, 55 ft. high, 30-unit multiple dwelling with an FAR of 1.15 and 45 parking spaces, which would have required FAR, height, and dwelling unit waivers; and

WHEREAS, after the Board expressed concern about this proposal not reflecting the minimum variance, the applicant submitted an intermediate proposal; and

WHEREAS, the intermediate proposal was for a three-story, 43-ft. high, 30-unit multiple dwelling, with an FAR of 0.95 and 45 parking spaces; and

WHEREAS, however, this proposal, in addition to requiring FAR, height and dwelling unit waivers, also required waivers for open space, rear yard, distance between windows and rear lot line, and proposed balconies; and

WHEREAS, the Board expressed the same concern about the proposal not reflecting the minimum variance, and suggested that the newly proposed waivers be eliminated; and

WHEREAS, subsequently, the applicant revised the proposal to the current version; and

WHEREAS, the Board notes that the site was the subject of a prior BSA application, brought under Cal. No. 387-04-BZ; and

WHEREAS, this application proposed a new UG 6 retail development, and was ultimately withdrawn; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, with continued hearings on June 13, 2006, August 8, 2006, September 12, 2006 and then to decision on October 17, 2006; and

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

WHEREAS, initially, on February 14, 2006, Community Board 1, Staten Island, recommended disapproval of this application, alleging that the site did not suffer any hardship; and

WHEREAS, however, on April 11, 2006, the Community Board recommended approval of the application, based on its conclusion that as of right development would not be feasible, and with the condition that the site be deed restricted to occupancy by adults age 55 and over; and

WHEREAS, the Borough President and certain housing advocates also supported this application; and

WHEREAS, the Clove Lake Civic Association ("CLCA") opposes this application; the reasons are discussed below; and

WHEREAS, the subject premises is a 25,260 sq. ft. trapezoidal shaped lot with 149.25 ft. of frontage along Clove Road and an average depth of approximately 246 ft.; and

WHEREAS, the site is bordered by Clove Road to the east, Clove Lakes Park to the west, dwellings and the Clove Way residential development to the south, and a part of a cemetery and a monument shop to the north; and

WHEREAS, Clove Road is a heavily traveled four-land arterial, and is designated by the City as a local truck route; and

WHEREAS, the site is currently developed with a vacant single-family residence, a vacant two-family residence (formerly occupied by a UG 6 florist), and several accessory structures, all of which are proposed to be demolished; and

WHEREAS, as noted above, the applicant proposes the construction of a three-story with cellar multiple dwelling for adults age 55 and over, with 38 accessory parking spaces and roof top recreation space; and

WHEREAS, the applicant states that the owner of the premises intends to limit the occupancy of the building through a deed restriction to adults age 55 and over in accordance with the Housing for Older Persons Act ("HOPA"), a federal program that allows for such older adult housing projects; and

WHEREAS, the Board notes that the applicant has voluntarily agreed that full HOPA compliance will be a condition of this grant; and

WHEREAS, additionally, the Board notes that an authorization pursuant to ZR § 119-312 from City Planning Commission is required prior to the issuance of any permit (due to the site location within the HS); and

WHEREAS, the non-complying bulk parameters of the proposed building are as follows: the residential floor area is 34,542 sq. ft. (the maximum permitted for a residential building is 21,816 sq. ft.); the residential FAR is 0.95 (0.50 is the

maximum permitted, though this may be increased to 0.6 through the attic bonus); the wall height is 40 ft. (the maximum permitted in 21 ft.); the total building height is 40 ft. (the maximum permitted is 35 ft.); and the curb cut and driveway width is 24 ft. (the maximum permitted is 18 ft.); and

WHEREAS, the complying parameters are as follows: 25 dwelling units; a front yard of 15 ft.; side yards of 15 ft. and 76 ft.; a rear yard of 30 ft.; lot coverage of 31.67%; and 38 accessory parking spaces; and

WHEREAS, the applicant notes that total height calculation is based upon the adjusted base plane; and

WHEREAS, the applicant also notes that the proposed cellar is more than one half below grade, and is thus exempt from calculation as zoning floor area; and

WHEREAS, however, the Board will defer to DOB as to the status of the cellar; and

WHEREAS, while the proposed residential use is as of right, the above-mentioned bulk non-compliances necessitate the instant variance application; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the site is approximately 603 feet away from the nearest sanitary and storm sewer line in Clove Road; and (2) the site is located adjacent to a cemetery and monument shop, and fronts on Clove Road, a heavily trafficked arterial roadway; and

WHEREAS, as to the first argument, the applicant claims that multiple engineering investigations establish that a sewer connection spanning a 603 ft. distance will be unusually expensive to construct, particularly when costs associated with addressing the existing utilities in the bed of Clove Road are calculated and included in the cost estimate; and

WHEREAS, the applicant states that additional FAR (and, consequently, a modest height waiver) is needed to overcome such premium costs; and

WHEREAS, the applicant further contends the subject site is the only large undeveloped parcel of land within one quarter of a mile that suffers from this hardship, and cites to a radius diagram in support of this contention; and

WHEREAS, however, the Board asked the applicant to provide more detailed testimony about this condition, and specifically asked that an explanation be provided of the increment in sewer-related costs between a typical large site on a private street that would need to connect to a sewer line versus the costs for this site; and

WHEREAS, in response, during the course of the hearing process, the applicant provided more detailed expert testimony in support of the argument that the sewer connection costs were both unusual and extraordinary; and

WHEREAS, specifically, at the August 8, 2006 hearing, three different sewer experts with experience in Staten Island development provided testimony, which, in sum and substance, established the following: (1) that generally developers seek to avoid sewer construction whenever possible due to the increased construction costs and the length of time such construction takes; (2) that such sewer construction occurs relatively infrequently (in about ten percent of all major developments), but is most common on Staten Island; (3) that 603 ft. of sewer installation is roughly double the normal length typically seen in a development project of this size where a sewer connection is necessary; (4) that unusual time delays will result due to both Department of Transportation (DOT) restrictions regulating how long Clove Road can be partially closed during the sewer construction and the amount of sub-surface wiring and piping already in place in Clove Road that will have to be monitored and navigated while sewer line is installed; and (5) that unlike other projects involving sewer construction, no opportunity exists with the subject development to recoup construction costs by selling the right for other developments to tie into the newly constructed sewer line; and

WHEREAS, the applicant supported this testimony with further submissions; and

WHEREAS, first, as to the unusual distance between the site and the nearest available sewer connection point, the applicant noted that only five of the recent 151 Staten Island development projects that involved sewer connections required sewer placement in a public street, as proposed here; and

WHEREAS, the applicant then cited to a report documenting a per unit sewer cost comparison between other sewer connection projects and that proposed for the subject site, for an as of right project as the site; and

WHEREAS, this report establishes that the sewer costs attributable to each dwelling unit in the as of right development scheme result in a cost which is nearly three times larger than any other cited location; and

WHEREAS, the applicant also provided a table comparing the per dwelling unit of the proposed building to per dwelling unit sewer costs of other developments; and

WHEREAS, this table likewise establishes that the actual sewer-related costs associated with the proposed development (approximately $526,000) are higher than every other cited location, aside from one development within an area that is more marketable for multi-million dollar dwellings (which can overcome sewer connection costs because of the high sell-out value); and

WHEREAS, second, as to the DOT restrictions, the applicant provided additional letters from the sewer experts, which further explicated the DOT stipulations as to construction within Clove Road; and

WHEREAS, one of the experts provided a letter listing the actual DOT stipulations, which generally address where and when work can be performed, and certain safety measures that much be undertaken; and

WHEREAS, this expert also provided a second letter, which clarified the impact that the stipulations would have on the sewer construction: the reduction of the productive workday to 3.5 hours and a decrease in general productivity due to the existence of in-ground utility lines, overhead wires, poles and trees; and

WHEREAS, this second letter concludes that more typical sewer construction projects have less time constraints, less encumbrances and fewer utility crossings, and therefore can be

constructed more quickly and at a lower cost; and

WHEREAS, a second sewer expert also provided a letter, confirming that the DOT stipulations are more restrictive than those imposed in a typical sewer project; and

WHEREAS, finally, a third sewer expert also provided a letter that further confirmed that the DOT stipulations would increase construction time and overall costs; and

WHEREAS, third, the applicant provided evidence that since there are no other large undeveloped sites in proximity to the subject site, there is no opportunity to sell the right to connect to the proposed sewer line; and

WHEREAS, the Board has reviewed the voluminous expert testimony about the sewer connection and agrees that it establishes that: (1) sewer connection costs for development on the site are exacerbated by the long travel path between the site and the nearest access point to an existing sewer connection within Clove Road; (2) such costs also increase due to the restrictions placed on sewer construction by DOT, as well as the complications of the in-ground pipes and wires and above-ground poles and trees; and (3) unlike other sites, no opportunity exists here to recoup some of the sewer construction costs by selling the right to connect to the newly built sewer to other developments; and

WHEREAS, the Board also concurs that the site is unique in this regard, based upon a review of the submitted radius diagram, as well as the testimony of the three experts, which established that in their experience sewer construction of the type contemplated here is very rare; and

WHEREAS, accordingly, the Board finds that the increased sewer costs contribute to the need for an increase in floor area (and as a result, in the height of the building); and

WHEREAS, as to the second claimed basis of uniqueness (the locational difficulties), the applicant states that site fronts on Clove Road, and is adjacent to a cemetery's waste storage area and a monument shop; and

WHEREAS, the applicant states that the Environmental Assessment Statement submitted with the application establishes that traffic volumes on Clove Road include more than 1,000 vehicles passing the site during the morning and afternoon rush hour; and

WHEREAS, the EAS also indicates that residential development along such high intensity arterials typically consists of five to ten story apartment buildings; and

WHEREAS, the applicant concludes that the instant site, given its frontage on Clove Road, is not suitable for complying low density residential development; and

WHEREAS, the applicant also cites to a separate report from another consultant which establishes that the site is not conducive to residential development since Clove Road is a designated truck route; and

WHEREAS, as to the proximity to the cemetery's waste storage area and the monument shop, the applicant states that these adjacent uses create noise, which would compromise residential development; and

WHEREAS, the Board has reviewed this expert testimony, and agrees that the frontage on Clove Road, a busy arterial and truck route, and the adjacency of the cemetery's waste storage area and a monument shop, compromises residential development; and

WHEREAS, the Board notes, however, that such difficulties contribute to need for FAR relief on a secondary basis; the primary hardship the site suffers is the premium costs related to sewer construction; and

WHEREAS, as to the curb cut and driveway waivers, the applicant states that since Clove Road is an arterial, the permitted maximum 18 ft. width is insufficient, and would compromise the maneuvering room for vehicles as they enter and exist the site; and

WHEREAS, the Board agrees that better ingress and egress is needed due to the number of proposed accessory spaces and notes that a wider curb cut and driveway will provide more efficient and safer vehicle access, given the heavy traffic on Clove Road; and

WHEREAS, based upon the above, the Board finds that the above-mentioned unique physical conditions inherent to the subject zoning lot, namely, the site's distance from a sewer connection and its location along Clove Road, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable use regulation; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenarios: (1) three two-family residences, utilizing a septic system (which would avoid infrastructure construction costs); (2) six single-family residences and four two-family residences (with a sewer and storm water connection); (3) a 22,400 sq. ft. medical facility; and (4) a not-for-profit senior housing development and

WHEREAS, this study concluded that none of these scenarios would result in a reasonable return; and

WHEREAS, however, the Board asked for clarification and amplification of this conclusion; and

WHEREAS, in response, the applicant submitted an additional study of the first two as-of-right proposals, prepared by a separate appraiser with experience in Staten Island; and

WHEREAS, this second study confirms the conclusions in the first study as to the residential development scenarios; and

WHEREAS, as to the not-for-profit senior housing development, the applicant states that there is no developer willing to undertake such a project; and

WHEREAS, finally, the applicant cited to the earlier feasibility analysis in support of the contention that an as of right medical facility would not realize a reasonable return; and

WHEREAS, in addition to clarification of the prior study, the Board also asked for an analysis of an as-of-right two-story garden apartment multiple dwelling; and

WHEREAS, in response, the applicant submitted a further study that concludes that such a scenario would not realize a reasonable return; and

WHEREAS, the applicant also provided the opinion of an independent architect, which establishes that the five as-of-right scenarios analyzed by the applicant illustrate the best development options for the site; and

WHEREAS, finally, the Board notes that the premium sewer connection costs inputted into the various feasibility studies contemplating a sewer system were significantly lower than actual established costs, in order to be conservative; specifically, the inputted sewer connection cost is $418,000 (as opposed to the actual cost of approximately $526,000); and

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

WHEREAS, the applicant initially represented 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 represents that the surrounding area is characterized by a mixture of low-density and larger residential buildings, as well as a significant amount of open and outdoor space; and

WHEREAS, further, as discussed in a submitted land use report, to the south of the site on Clove Road, there are two large non-complying ten-story multi-family residential buildings; and

WHEREAS, to the southeast of the site, along Clove Way, there are existing two-story residential buildings, approximately 25 to 30 ft. high; and

WHEREAS, the report indicates that the proposed site plan includes landscaped buffers varying from 25 to 30 ft. wide on all of the site's lot lines, including along the south side of the site by the two-story homes; and

WHEREAS, the report further indicates that the amount of accessory parking spaces (38) is more than sufficient for the amount of units and visitors; and

WHEREAS, the applicant, citing to this report, concluded that the building as first proposed would not create any impact on the character of the neighborhood or adjacent uses; and

WHEREAS, the Board observes that while the building envelope was later reduced in response to its concerns about the project reflecting the minimum variance, the applicant's conclusions about the proposal's impact on the character of the community remain valid; and

WHEREAS, additionally, during the course of the hearing process, the Board asked the applicant to clarify the total height, and noted that some of the height waiver appeared to be driven by a decorative element at the roofline; and

WHEREAS, it was suggested to the applicant that compliance with the applicable height requirement might be possible if this element was removed and if the floor to ceiling heights were reduced; and

WHEREAS, in a submission dated September 18, 2006, the applicant provided a revised proposal that eliminated the decorative element and reduced the floor to ceiling height; and

WHEREAS, however, the applicant notes that while the front total elevations of the building were reduced, which diminishes the visible height, the application of the adjusted base plan measurement results in an actual height that still requires a small five ft. height waiver; and

WHEREAS, the Board finds that this waiver is acceptable, given the actual reduction is front elevation and total building height; and

WHEREAS, in sum, the Board observes that the current version of the proposed building reflects a lesser FAR and total height than that originally proposed, which is more consonant with the character of the neighborhood and which will not impact adjacent conforming uses; and

WHEREAS, the Board also notes that the wider curb-cut and driveway will enhance the safety of vehicular access to the site, and will not detract from the character of the neighborhood or impact adjacent uses; and

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

WHEREAS, to eliminate any argument that the hardship related to the sewer connection was self-created because the owner of the site failed to attempt to connect to the sewer system present in the adjacent Clove Way Estates development, the applicant provided affidavits that establish that repeated inquiries and offers concerning connecting to Clove Way Estates were unsuccessful; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather the result of the above-mentioned unique physical conditions inherent to the subject zoning lot; and

WHEREAS, in addition to analyzing the above-mentioned conforming scenarios and the proposal, the applicant, at the request of the Board, also analyzed the following lesser variance scenario: a three-story, 0.88 FAR multiple dwelling with 23 dwelling units; and

WHEREAS, the applicant submitted an additional report that concludes that such a scenario would not realize a reasonable return; and

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

WHEREAS, as noted above, CLCA opposes this application on the following bases: (1) the alleged sewer related and locational hardships are typical of Staten Island; (2) the underground improvements in the bed of Clove Road are minimal and won't delay sewer construction; (3) the estimate for the sewer connection has increased during the public hearing process from approximately $241,000 in November of 2005 to approximately $526,000 in August of 2006, and in any event, deviates from the cost proposal submitted to the Department of Environmental Protection; (4) the sales comparables in the January 2006 economic analysis are inflated; (5) the non-profit senior housing scenario and the medical office scenario are not as of right, but would require CPC approval; (6) the actual purchase price of the property would allow a return on an as of right residential development; (7) the proposed FAR does not take into account the floor space in the cellar; and (8) that the proposed roof-top recreation space would impact adjacent

neighbors; and

WHEREAS, as to the first argument, the Board observes that the applicant has submitted ample expert testimony (as discussed above) refuting the contention that the travel distance from the site to the nearest sewer connection point and the DOT restrictions are typical of all development in Staten Island; and

WHEREAS, as to the second argument, the applicant supplied the Board with additional expert testimony and plans that establish that the underground pipes and cables and above-ground wires, trees and poles will be significant obstacles during sewer construction; and

WHEREAS, as to the third argument, the Board observes that CLCA has not submitted any evidence that there was at one time an estimate for $241,000, and that even if there was, it credits the current estimate as submitted by the applicant; and

WHEREAS, as to the DEP estimate, one of the experts explained that the estimate submitted to DEP is for bond purposes only and never reflects the actual detailed and established cost; and

WHEREAS, as to the fourth argument, the applicant submitted a statement from one of its feasibility experts establishing that the cited comparables were appropriately used; the Board has reviewed this statement and finds it credible and sufficient; and

WHEREAS, as to the fifth argument, the Board notes that it would not compromise the application even if CPC approval was required for a medical office or a not-for-profit senior housing development, since such a scenario would then be discretionary there is no requirement under ZR § 72-21(b) that scenarios that are not as of right be analyzed; and

WHEREAS, as to the sixth argument, the Board notes that the actual purchase price is not the standard measure of the site valuation; rather, site valuation is always established through the submission of comparables, so as to avoid any effect that a purchase transaction that is not arms length might have; and

WHEREAS, instead, in all variance applications, the Board requires applicants to establish the site valuation based upon comparables, as occurred here; and

WHEREAS, as to the seventh argument, the applicant has submitted an explanation of why the lowest level of the proposed building is a cellar rather than a basement, such that the floor space therein does not count as zoning floor area; and

WHEREAS, additionally, as noted above, the Board will condition this grant upon DOB review and approval of the cellar and total zoning floor area; and

WHEREAS, as to the eighth argument, the Board observes that the proposed roof top recreation space is approximately 60 feet away from the nearest neighboring dwelling, and will not compromise in any way the use of these dwellings; and

WHEREAS, accordingly, the Board finds the opposition arguments unpersuasive; 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 Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA044R, dated December 22, 2005; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance to permit within an R3-2 (HS) zoning district, the construction of a three-story, 40 ft. high 25-unit Use Group 2 multiple dwelling for adults age 55 and over, with a floor area of 24,542 sq. ft. and a Floor Area Ratio (FAR) of 0.95, which does not comply with zoning requirements for total and residential floor area, street wall height, total height, and curb cut and driveway width, contrary to ZR §§ 23-141, 23-631, 25-622 and 25-632, *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 20, 2006"- three (3) sheets; "Received September 25" – one (1) sheet, and "Received October 5, 2006" – three (3) sheets; and *on further condition*:

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the proposed building;

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

THAT the appropriate authorization from the City Planning Commission be obtained prior to the issuance of any building permit;

THAT DOB shall review the lowest level of the proposed building and confirm that it is a cellar and that the floor space does not count as zoning floor area;

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

THAT accessory and visitor parking shall be provided as indicated on the BSA-approved plans;

THAT all exiting requirements shall be as reviewed and approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, October 17, 2006.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 4, 2006, acting on Department of Buildings Application No. 301990923, reads, in pertinent part:

"1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio which is contrary to ZR Section 23-141(b).
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space/coverage which is contrary to ZR Section 23-141(b).
3. Proposed enlargement results in two side yards of less than 5 feet and the total of both side yards less than 13 feet, contrary to ZR Section 23-461(a).
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on August 8, 2006 and September 19, 2006, and then to decision on October 17, 2006; and

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

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

WHEREAS, certain neighbors provided testimony in support of this application; and

WHEREAS, however, certain neighbors provided testimony in opposition to this application citing concerns about access to light and air and the preservation of the character of the block; and

WHEREAS, the subject lot is located on the west side of East 14th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by an 846.05 sq. ft. (0.338 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 846.05 sq. ft. (0.338 FAR) to 2,498.85 sq. ft. (0.9995 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 33 percent to 51 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,653.95 sq. ft. to 1,213.55 sq. ft. (the minimum required open space is 1,375 sq. ft.); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards of 2'-6 ½" and 4'-1 ½" (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the proposed enlargement will maintain the non-complying 6'-9 ½" front yard (a minimum front yard of 10'-0" is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 45'-9" to 21'-6 ½" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, both the proposed perimeter wall height of 21'-0" and the total height of 31'-0" comply with district regulations; and

WHEREAS, initially, the applicant proposed a building with a perimeter wall height of 25'-0" and a total height of 35'-0"; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed height; and

WHEREAS, the applicant submitted a streetscape which illustrates that the street is occupied primarily with older one-story bungalows and a small number of newer two- and three story homes; and

WHEREAS, the applicant also submitted photographs of buildings in the vicinity and information about their bulk parameters; and

WHEREAS, the Board notes that buildings in the general vicinity include large multiple-unit dwellings and a number of two- and three-story homes; and

WHEREAS, however, in consideration of the context of the subject block, the Board asked the applicant to reduce the height; and

WHEREAS, specifically, the Board suggested that the floor to ceiling height of the second floor be reduced from 16 feet; and

WHEREAS, the applicant revised the plans to show a second floor height of 12'-4 ½", which resulted in the total height being reduced from 35'-0" to 31'-0"; and

WHEREAS, the Board notes that the as-of-right enlargements of nearby homes have resulted in homes with 21 ft. wall heights and 31 ft. total heights, with the exception of one with a height of 35 feet; 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, the Board also notes that the lot is within an R4 district and that the FAR request is reasonable, given that an FAR of 0.9 is permitted as of right; 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 Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that the side walls of the foundation and first floor will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and floors would remain; and

WHEREAS, Board finds that 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 R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 5, 2006"–(10) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall be used for household storage only;

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 2,498.85 sq. ft., a total FAR of 0.9995, a perimeter wall height of 21'-0", and a total height of 31'-0", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A2, A3, A4, and A4-1, stamped September 5, 2006;

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

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

THAT the front porch 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, October 17, 2006.

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 7605, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 24, 2006, acting on Department of Buildings Application No. 302085213, reads in pertinent part:

"1. Proposed floor area contrary to ZR 23-141(a).
2. Proposed open space ratio contrary to ZR 23-141(a).
3. Proposed rear yard contrary to ZR 23-47."; 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), floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on August 22, 2006, after due notice by publication in *The City Record*, with continued hearing on September 19, 2006, and then to decision on October 17, 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 west side of East 24th Street, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 5,625 sq. ft., and is occupied by a 2,701.5 sq. ft. (0.48 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 2,701.5 sq. ft. (0.48 FAR) to 5,850.34 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,812.5 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the open space ratio from 151.81 percent to 51.75 percent (150 percent is the minimum permitted) and the open space from 4,101.16 sq. ft. to 3,012 sq. ft. (the minimum required open space is 4,218.75 sq. ft.); and

WHEREAS, the proposed enlargement will reduce the rear yard from 31'-4 ¾" to 21'-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, both the proposed wall height of 22'-9 ½" and the total height of 35'-11 ¾" comply with district regulations; and

WHEREAS, at hearing, the Board expressed concern that the proposal did not meet the criteria for a home enlargement; and

WHEREAS, specifically, the Board was concerned that not enough of the existing home would be retained; and

WHEREAS, further, those portions of the existing home that the applicant proposed to retain had no relationship to the proposed home; and

WHEREAS, in response, the applicant submitted revised plans indicating that a larger portion of the north wall would be retained at the cellar level and on the first and second floors; and

WHEREAS, in addition, the revised plans illustrate a more practical plan for the existing walls and floor joists proposed to be retained; and

WHEREAS, after a review of the revised plans, the Board agrees that the applicant now proposes an actual enlargement; and

WHEREAS, the Board also expressed concern about the compatibility of the proposed home's bulk and asked the applicant to submit detailed information about the bulk parameters of homes in the vicinity; and

WHEREAS, in response, the applicant submitted a table listing the existing FAR and lot size of all the homes on both sides of East 24th Street within a 200 ft. radius of the site; and

WHEREAS, the applicant asserts that one-third of the homes on East 24th Street within the 200 ft. radius of the site

have an FAR of 1.0 or greater; and

WHEREAS, the Board asked for documentation to support this assertion; and

WHEREAS, the applicant submitted documentation from DOB and Oasis databases; and

WHEREAS, at the Board's request, the applicant also submitted photographs of two of the comparable nearby homes; and

WHEREAS, further, the applicant submitted a streetscape that illustrates that the street is occupied with a number of comparably-sized homes; and

WHEREAS, the Board agrees that the general vicinity includes large homes comparable in size to the proposed; and

WHEREAS, the Board also notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit in the subject zoning district; 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 Board finds that 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, floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "October 3, 2006"–(13) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the attic shall contain a maximum of 768.6 sq. ft.;

THAT the above conditions 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 5,850.34 sq. ft., a total FAR of 1.04, a wall height of 22'-9 ½", and a total height of 35'-11 ¾", all as illustrated on the BSA-approved plans;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets A-1.1, A3, A4, A5, A6, and A8, stamped October 3, 2006;

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

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

THAT the porches 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, October 17, 2006.

112-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Audubon Housing Dev. Fund Corp., owner.

SUBJECT – Application June 5, 2006 – Variance application pursuant to Z.R. §72-21 to permit the construction of a seven-story and cellar residential and commercial building with accessory supportive social services. The accessory supporting social services programs and commercial component will be located on the first floor. The residential component will be located on floors 1 through 7. The premises is located in an M1-4 zoning district. The site was most recently used for automobile sales and storage. The proposal seeks to vary, based on the nearby R7-1 zoning district, Z.R. §23-142 (Residential Floor Area), §24-111 (Total Floor Area), §23-142 (Open Space), 23-22 (Number of Dwelling Units), and §23-632 (for Wall Heights, Total Height, Setbacks, Sky Exposure Plane, and Number of Parking Spaces).

PREMISES AFFECTED – 507 East 176th Street, northwest corner of Third Avenue and 176th Street, Block 2924, Lots 38, 39, 42, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 5, 2006, acting on Department of Buildings Application No. 201051404, reads, in pertinent part:

"Proposed (7) seven story residential building in an M1-4 zoning district is contrary to section 42-00 ZR."; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-4 zoning district, the proposed construction of a seven-story with cellar residential/commercial building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 26, 2006 after due notice by publication in *The City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of Audubon Housing Development Fund Corporation ("Audubon"), a not-for-profit entity; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, Borough President Adolfo Carrion, Jr., State Senator Efrain Gonzalez, Jr., Public Advocate Betsy Gotbaum, and Congressman Jose E. Serrano all provided testimony in support of this application; and

WHEREAS, the Administration for Children's Services, the Corporation for Supportive Housing, and New York City's Department of Housing Preservation and Development also provided testimony in support of this application; and

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

WHEREAS, the site, comprised of Lots 38, 39, and 42, has a lot area of approximately 6,980 sq. ft., and is on the northwest corner of Third Avenue and 176th Street, with 56 feet of frontage along Third Avenue and 120 feet of frontage along 176th Street; and

WHEREAS, the site is currently vacant and undeveloped, except for a small metal garage located in the northern portion of the lot; and

WHEREAS, the applicant proposes to construct a seven-story with cellar residential/commercial building; and

WHEREAS, the building will contain 68 studio apartments; and

WHEREAS, the commercial space will be located on the first floor and cellar level (along Third Avenue and for approximately 27 feet along 176th Street); the dwelling units will be located on floors one through seven; and the accessory supportive social services space will be located on the first floor; and

WHEREAS, the commercial component on the first floor will occupy 1,499 sq. ft. of floor area; the residential component will occupy a total of approximately 35,097 sq. ft. on floors one through seven, with 1,202 of that occupied by accessory social services space on the first floor; and

WHEREAS, the proposed building will have a total floor area of 36,596 sq. ft.; a total FAR of 5.243; a residential floor area of 35,097 sq. ft.; a residential FAR of 5.028; a commercial floor area of 1,499 sq. ft.; a street wall and total height of 72'-8"; 1,752 sq. ft. of open space; an open space ratio of 4.99 percent; and no parking spaces; and

WHEREAS, as to programmatic needs, the applicant represents that the proposed housing program will allocate approximately 60 percent of the units for young adults who no longer qualify for foster care and 40 percent for other low-income young adults from the surrounding neighborhood; and

WHEREAS, the applicant represents that Audubon worked closely with HPD to design the facility with components of existing facilities with comparable missions; and

WHEREAS, further, the applicant represents that the design includes access to onsite accessory social service programming, which includes training, counseling, and case management; and

WHEREAS, additional onsite amenities include a garden in the rear courtyard, laundry facilities, and a green roof to promote energy efficiency; and

WHEREAS, the applicant further represents that in order to qualify for funding from HPD, Audubon must provide a minimum of 68 apartments; and

WHEREAS, the applicant notes that the construction of 68 livable apartments at the site requires a certain minimum amount of floor area and access to light and air which, in turn, necessitates the requested building envelope; and

WHEREAS, however, since the site is within the subject manufacturing district, the requested use waiver is required; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the surface and subsurface contamination and the resultant need for remediation; (2) the high ground water table; (3) the history of uses at the site; and (4) the inability to support manufacturing use at the site; and

WHEREAS, as to the contamination, the applicant represents that soil borings indicate that there are high levels of semi-volatile organic compounds, petroleum hydrocarbons, and metals at the site; and

WHEREAS, the applicant represents that this condition requires that any soil to a depth of ten feet is to be considered contaminated and must be disposed of in accordance with applicable regulations; and

WHEREAS, the applicant has documented the costs associated with the remediation; and

WHEREAS, as to the water table, the applicant represents that the soil borings indicate that the site has a high water table and that groundwater has been measured at depths of 12'-0" to 12'-6"; and

WHEREAS, the applicant represents that additional construction measures, including the installation and maintenance of multiple sump pumps and a dewatering system, are required to accommodate the high water table and make the building water tight, both during construction and after its completion; and

WHEREAS, the applicant represents that remediation measures may also be necessary prior to discharging groundwater at the site into the sewer system; and

WHEREAS, the applicant has submitted reports from a geotechnical consultant supporting these assertions; and

WHEREAS, as to the history of use at the site, the applicant represents that all three of the subject lots have a history of residential use and that they have all been vacant since approximately 1984; and

WHEREAS, the applicant has submitted Sanborn maps that support this assertion; and

WHEREAS, as to the viability of a manufacturing use at the site, the applicant represents that there are a large number of vacant sites in the area, and that only four sites within a 400-ft. radius of the site are occupied with manufacturing uses; and

WHEREAS, further, the applicant notes that two of the four sites occupied by manufacturing uses are significantly larger than the subject site; and

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

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, as to residential use, the applicant states that the proposed building is located across Third Avenue from an R7-1 zoning district and is surrounded by residential buildings; and

WHEREAS, specifically there is a four-story multiple dwelling adjacent to the site to the north along Third Avenue, and a four-story multiple dwelling adjacent to the site along 176th Street; and

WHEREAS, additionally, there is a 118-unit eight-story residential building one block from the site at 176th Street and Bathgate Avenue; and

WHEREAS, the applicant represents that there are also a significant number of community facility uses in the vicinity, including an elementary school, three churches, two health centers, and a library all within one block of the subject site; and

WHEREAS, the applicant also notes that Crotona Park is directly across the street from the site; and

WHEREAS, as to commercial use, the applicant notes that the proposed as-of-right commercial use is situated on Third Avenue, which has a commercial context; and

WHEREAS, as to parking, the applicant asserts that because the future residents will be low-income young adults, substantial car ownership is not anticipated and the absence of the 20 required spaces will not have a negative impact on the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that buildings within the 400-ft. radius of the site range in height from one story to eight stories; and

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

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

WHEREAS, as discussed above, Audubon requires a minimum number of housing units in order to achieve its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Audubon to carry out the stated needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA095X, dated June 14, 2006; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (1) an Environmental Assessment Statement Form, dated June 14, 2006; (2) Phase I Environmental Site Assessment Report dated January 2006 and a Phase II Subsurface Investigation Report received on August 11, 2006; and

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

WHEREAS, a Restrictive Declaration was executed on October 4, 2006 and submitted for proof of recording on October 6, 2006, which requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the Restrictive Declaration and the Applicant's agreement to the conditions noted below; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in an M1-4 zoning district, a proposed seven-story with cellar residential/commercial building, which is

contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 3, 2006" - (6) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

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

THAT the parameters of the proposed building shall be: a total floor area of 36,596 sq. ft.; a residential floor area of 35,097 sq. ft.; a commercial floor area of 1,499 sq. ft.; a total FAR of 5.243; a residential FAR of 5.028; a street wall height of 72'-8"; and a total height of 72'-8" (without bulkhead);

THAT prior to the issuance of any DOB permit for any work on the site that would result in soil disturbance (such as site preparation, grading or excavation), the applicant or any successor will perform all of the hazardous materials remedial measures and the construction health and safety measures as delineated in the Remedial Action Plan and the Construction Health and Safety Plan to the satisfaction of DEP and submit a written report that must be approved by DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Final Notice of Satisfaction or a Notice of No Objection indicating that the Remedial Action Plan and Health and Safety Plan has been completed to the satisfaction of DEP;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 17, 2006.

149-06-BZ

APPLICANT – Sheldon Lobel, P.C., for NYC Department of Citywide Administrative Services, owner; Boro Park Volunteers of Hatzolah, Inc., lessee.

SUBJECT – Application July 7, 2006 – Variance pursuant to Z.R. §72-21 to permit the development of the site to accommodate a not-for-profit ambulance/emergency vehicle garage, dispatch, and training facility. The premise is located in an M2-1 zoning district. The proposal is request variance waivers relating to floor area (Z.R. §43-12) and the number of parking spaces (Z.R. §44-21).

PREMISES AFFECTED – 3701 14th Avenue, southwest corner of the intersection formed by 14th Avenue and 37th Street, Block 5348, Lot 9 (portion), Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Sheldon Lobel, Larry Morrish, Douglas Jablon, Elliot Rosman, Bernie Gips, Simcha Felder, Sister Barbara Mullen and Ron Mandel.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Abstain: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application No. 302184428, reads, in pertinent part:

"1) The floor area does not comply with ZR 43-12.
2) The number of parking spaces does not comply with ZR 44-21."; and

WHEREAS, this is an application under ZR § 72-21, to permit the development of a site for an ambulance/emergency vehicle garage (UG 16C), and a dispatch center and training facility (UG 6D) in an M2-1 zoning district, contrary to ZR §§ 43-12 and 44-21; and

WHEREAS, a public hearing was held on this application on September 26, 2006, after due notice by publication in the *City Record*, and then to decision on October 17, 2006; and

WHEREAS, this application is brought on behalf of Boro Park Volunteers of Hatzolah ("Hatzolah"), a not-for-profit entity; and

WHEREAS, New York City, through the New York City Economic Development Corporation (EDC), has agreed to sell the site to Hatzolah and is a co-applicant; and

WHEREAS, an application for a special permit to allow development within a former railroad right-of-way was brought to the Department of City Planning concurrently with this application; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, City Council Member Simcha Felder and EDC provided testimony in support of this application; and

WHEREAS, certain members of the community served by Hatzolah also provided testimony in support of this application; and

WHEREAS, the subject premises is located at the southwest corner of 14th Avenue and 37th Street; and

WHEREAS, the site has a lot area of 5,000 sq. ft.; and

WHEREAS, the site is currently undeveloped and used for vehicle storage; and

WHEREAS, the applicant proposes to construct a 45'-10" high three-story with cellar building to be occupied by a volunteer ambulance/emergency vehicle company, which includes space for a UG 16C garage and a UG 6D dispatch

center and training facility; and

WHEREAS, the applicant obtained a pre-consideration from DOB which indicates that the proposed use groups are acceptable; and

WHEREAS, the 5,000 sq. ft. cellar will be occupied by a large training room for ambulance volunteers; and

WHEREAS, the 4,600 sq. ft. first floor will serve as a garage for six ambulances; and

WHEREAS, the 5,000 sq. ft. second floor will be occupied by accessory administrative offices, a conference room, and two small training rooms; and

WHEREAS, the 5,000 sq. ft. third floor will be occupied by classrooms, an exercise room, and equipment storage; and

WHEREAS, the proposed building will have a total floor area of 14,600 sq. ft. (10,000 is the maximum permitted); a total FAR of 2.92 (2.0 is the maximum permitted); and no parking spaces other than the six used for emergency vehicle storage (17 parking spaces, or one space per 600 sq. ft. of floor area on the second and third floors, are required); and

WHEREAS, the applicant states that Hatzolah is a volunteer ambulance/emergency response service which is offered for free to all community members within the neighborhoods it serves; and

WHEREAS, as to programmatic needs, the applicant represents that the proposed facility will allow consolidation of Hatzolah's services, which are now located in four separate smaller facilities with the following limitations: 1) one facility accommodates three ambulances and small training sessions; 2) one facility accommodates the administrative offices; 3) one facility accommodates a dispatch office; and 4) one accommodates a garage used for equipment storage; and

WHEREAS, the applicant asserts that the efficiency and function of Hatzolah's operation are compromised due to the distance between the facilities and lack of consolidation; and

WHEREAS, the applicant represents that the proposed parking and floor area waivers are necessary to construct a single building that can accommodate the programming currently located at Hatzolah's separate facilities; and

WHEREAS, specifically, the applicant represents that the new building is necessary to allow Hatzolah to expand its training capacity and increase and diversify its vehicle dispatch points, thereby improving response times; and

WHEREAS, the applicant also represents that a corner location such as the subject site is the best location for the facility because it allows immediate access onto two streets; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) the subsurface soil conditions and the resultant need for remediation; and (2) the history of uses at the site; and

WHEREAS, as to the soil contamination, the applicant represents that soil borings indicate high levels of semivolatile organic compounds and metals at the site; and

WHEREAS, because of the contamination, the applicant represents that the New York City Department of Environmental Protection requires adherence to certain remediation measures; these include the incorporation of a vapor barrier in the design plan for the development, and the development and adherence to a site-specific construction health and safety plan; and

WHEREAS, as to the history of uses at the site, the applicant states that the site is located on a portion of a former railroad right-of-way previously used by the South Brooklyn Railway which operated at ground level along 37th Street between Fort Hamilton Parkway and MacDonald Avenue; and

WHEREAS, further, the applicant states that the subject right-of-way was also the path of an elevated transit line, which was demolished in 1985; and

WHEREAS, additionally, the applicant represents the site has not been developed with traditional manufacturing or commercial uses since at least 1929; and

WHEREAS, the applicant asserts that since the demolition of the elevated transit lines in 1985, the site has been undeveloped; and

WHEREAS, the applicant has submitted Sanborn maps which support these assertions; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, specifically, the Board believes that, given the soil conditions, which result in increased construction costs, and the size constraints of the site, the proposed configuration and amount of floor area are required to allow for efficient use; and

WHEREAS, Hatzolah need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that there are a variety of commercial and manufacturing buildings surrounding the site; and

WHEREAS, specifically, the applicant states that the site abuts a gasoline service station with an accessory store; and

WHEREAS, the applicant states that other uses on the subject block include parking, an iron factory, and a warehouse; and

WHEREAS, as to bulk, the applicant states that there is six-story manufacturing building directly across 37th Street that occupies the entire block front from 14th Avenue to 15th Avenue and that there is a large four-story factory directly across 14th Avenue; and

WHEREAS, other sites in the vicinity are occupied by two- and three-story buildings; and

WHEREAS, as to parking, the applicant cites to the Environmental Assessment Statement (EAS) which explains that during the hours when parking would be needed at the site - off-peak weekday hours when classes would be held - there is sufficient on-street parking available in the immediate vicinity; and

WHEREAS, additionally, the applicant represents that except during training sessions, the amount of personnel at the site ranges from only two to five, depending on the shift, and that the parking need would be minimal; and

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

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

WHEREAS, as discussed above, Hatzolah requires a consolidation of its facilities to a new building in order to achieve its programmatic needs; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief while allowing Hatzolah to meet its stated needs; and

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

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

WHEREAS, the Office of the Deputy Mayor for Economic Development and Rebuilding is the CEQR Lead Agency for this project and the Board has reviewed its Final EAS CEQR No. 06DME004K, dated January 25, 2006; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals adopts the Negative Declaration issued by the New York City Office of Environmental Coordination on behalf of the Office of the Deputy Mayor for Economic Development and Rebuilding with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit the development of a site to accommodate an ambulance/emergency vehicle garage, dispatch center, and training facility in an M2-1 zoning district, contrary to ZR §§ 43-12 and 44-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 28, 2006"– (9) sheets; and *on further condition*:

THAT any change in ownership, operator, or control of the site shall require the prior approval of the Board;

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

THAT the parameters of the proposed building shall be as follows: a total floor area of 14,600 sq. ft.; a total FAR of 2.92; and a street wall and total height of 45'-10";

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

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

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

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

Adopted by the Board of Standards and Appeals, October 17, 2006.

194-04-BZ thru 199-04-BZ

APPLICANT – Agusta & Ross, for Always Ready Corp., owner.

SUBJECT – Application May 10, 2004 – Under Z.R. §72-21 Proposed construction of a six- two family dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED –

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

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

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

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

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

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

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

328-04-BZ
APPLICANT – Law Offices of Howard Goldman, LLC, for Rockaway Improvements, LLC, owner.
SUBJECT – Application October 5, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a six story residential building, with twelve dwelling units, Use Group 2, located in an M1-1 zoning district, does not comply with zoning requirements for use, bulk and parking provisions, is contrary to Z.R. §42-00, §43-00 and §44-00.
PREMISES AFFECTED – 110 Franklin Avenue, between Park and Myrtle Avenues, Block 1898, Lots 49 and 50, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Chris Wright.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to November 21, 2006, at 10 A.M., for decision, hearing closed.

33-05-BZ
APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.
SUBJECT – Application February 24, 2005 – Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35); Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).
PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Jordan Most.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

175-05-BZ
APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.
SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.
PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13,16, Borough of Brooklyn.
COMMUNITY BOARD #6BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

199-05-BZ
APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.
SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.
PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Joseph Morsellino.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0
ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

313-05-BZ
APPLICANT – Sheldon Lobel, P.C., for Douglas Brenner and Ian Kinniburgh, owners.
SUBJECT – Application October 20, 2005 – under Z.R. §72-21 to allow a proposed enlargement of an existing residential building located in C6-1 and R7-2 districts to violate applicable rear yard regulations; contrary to Section 23-47.
PREMISES AFFECTED – 26 East 2nd Street, Block 458, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Richard Lobel.
For Opposition: Stuart Beckerman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 31, 2006, at 10 A.M., for decision, hearing closed.

363-05-BZ
APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.
SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.
PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.
COMMUNITY BOARD #4Q
APPEARANCES – None.
ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

427-05-BZ
APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.
SUBJECT – Application December 28, 2005 – Pursuant to ZR §73-44 Special Permit to permit the proposed retail, community facility and office development (this latter portion is use group 6, parking requirement category B1, office use) which provides less than the required parking and is contrary to ZR §36-21.
PREMISES AFFECTED – 133-47 39th Avenue, between Prince Street and College, Block 4972, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Eric Palatnik, Hiram Rothkrug and Tim Mustafa.
For Opposition: Earle Tolkman.
ACTION OF THE BOARD – Laid over to December 5, 2006, at 1:30 P.M., for continued hearing.

302-05-BZ
APPLICANT– Sheldon Lobel, P.C., for 262-272 Atlantic Realty Corp., owner.
SUBJECT – Application October 12, 2005 – Variance under 72-21 to allow a transient hotel (UG 5) in an R6A/C2-4 (DB) zoning district. Proposal is contrary to ZR sections 32-14 (use), 33-121 (FAR), 101-721 and 101-41(b) (street wall height), 101-351 (curb cut), and 35-24 (setback).
PREMISES AFFECTED – 262-276 Atlantic Avenue, south side of Atlantic Avenue, 100' east of the corner of Boerum Place and Atlantic Avenue, Block 181, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Jordan Most and Fack Freeman.
For Opposition: Robert Perris, Sandy Balbola and Anita Abraham-Inz.
ACTION OF THE BOARD – Laid over to December 12, 2006, at 1:30 P.M., for continued hearing.

82-06-BZ
APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.
SUBJECT – Application May 2, 2006 – pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. Section 22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.
PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.
COMMUNITY BOARD # 7Q
APPEARANCES –
For Applicant: Eric Palatnik and Ken Bedrosian.
ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

104-06-BZ
APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.
SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.
PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue "O", Block 7678, Lot 84, Borough of Brooklyn.
COMMUNITY BOARD # 14BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to November 21, 2006, at 1:30 P.M., for continued hearing.

132-06-BZ
APPLICANT– Fried Frank Harris Shriver & Jacobson, LLP, for 122 Greenwich Owner, LLC, owner.
SUBJECT – Application June 23, 2006 – Variance pursuant to Z.R. §72-21 to allow an eleven (11) story residential building with ground floor retail and community facility uses on a site zoned C6-2A and C1-6. The proposed

building would contain 36 dwelling units and would be non-complying with respects to floor area, lot coverage, rear yard, height and setback, inner court, and elevator bulkhead requirements; contrary to Z.R. §§23-145, 35-31, 23-47, 35-24, 23-633, 23-851 and 33-42.
PREMISES AFFECTED – 122-136 Greenwich Avenue, northeast corner of Greenwich Avenue and 8th Avenue, Block 618, Lot 1, Borough of Manhattan
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Stephen Lefkowitz, Dominic Dunn, Gloria Glas, David Penick, Andrew A'Amico, James K, Allen Roskoff, Danielle Sevier and Jack Freeman.
For Opposition: Gregory Brenden(Assemblymember Glick's Office, Brian Cook, Doris Diether, Melissa Baldock, Zaehaner Winestine, Nicholas Atocha and Wendy Deinbo.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

176-06-BZ
APPLICANT– Lewis E. Garfinkel, R.A., for Aryeh Adler, owner.
SUBJECT – Application August 16, 2006 - Pursuant to ZR 73-622 for the enlargement of a single family home which proposes less than the minimum rear yard, ZR 23-47, side yards, ZR 23-461, open space, ZR 23-141 and exceeds the permitted FAR, ZR 23-141. The premise is located in an R2 zoning district.
PREMISES AFFECTED – 1253 East 28th Street, east side of East 28th Street, Block 7646, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Eric Palatnick.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Collins and Commissioner Ottley-Brown.....4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 24, 2006, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 6:00 P.M.