
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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CONTENTS

DOCKET	189
CALENDAR of April 25, 2006	
Morning	190
Afternoon	190
SPECIAL HEARING of April 26, 2006	
Morning	191

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, March 14, 2006**

Morning Calendar192

Affecting Calendar Numbers:

384-74-BZ	3120 Heath Avenue, Bronx
617-80-BZ	770/780 McDonald Avenue, Brooklyn
1-95-BZ	117 Seventh Avenue South, Manhattan
364-36-BZ, Vol. II	31-70 31 st Street, Queens
1888-61-BZ	93-10 23 rd Avenue, Queens
374-71-BZ	205-11 Northern Boulevard, Queens
263-98-BZ	118 Oxford Street, Brooklyn
43-99-BZ	38-02 Northern Boulevard, Queens
165-02-BZ thru 190-02-BZ	143-147 Classon Avenue, a/k/a 380-388 Park Avenue, Brooklyn
148-03-BZ	111/13 West 28 th Street, Manhattan
189-05-A	240 Riverside Boulevard, Manhattan
198-05-A	6 Cornell Lane, a/k/a 43-06 Cornell Lane, Queens
155-05-A	81 East 3 rd Street, Manhattan
173-05-A	85-24 168 th Place, Queens
317-05-A	4 East 3 rd Street, Manhattan

Afternoon Calendar199

Affecting Calendar Numbers:

289-04-BZ	341 Canal Street, Manhattan
382-04-BZ	2026 Avenue "T", Brooklyn
160-04-BZ & 161-04-BZ	73 Washington Avenue, Brooklyn
245-04-BZ	102/04 Franklin Avenue, Brooklyn
286-04-BZ & 287-04-BZ	85-78 & 85-82 Santiago Street, Queens
338-04-BZ	806/14 Coney Island Avenue, Brooklyn
351-04-BZ	210-08/12 Northern Boulevard, Queens
359-04-BZ	1425 East 24 th Street, Brooklyn
398-04-BZ	2103 Avenue M, Brooklyn
52-05-BZ	6209 11 th Avenue, Brooklyn
65-05-BZ	269-275 East Burnside Avenue, Bronx
81-05-BZ	1061/71 52 nd Street, Brooklyn
132-05-BZ	220 West End Avenue, Brooklyn
133-05-BZ	1231 East 21 st Street, Brooklyn
136-05-BZ	1901 Nereid Avenue, Bronx
146-05-BZ	900 Second Avenue, a/k/a 884-900 Second Avenue, Manhattan
179-05-BZ	139 Langham Street, Brooklyn
194-05-BZ	5525 Amboy Road, Staten Island

DOCKETS

New Case Filed Up to March 14, 2006

39-06-BZ

245 Varet Street, North side 100' East of intersection of White Street & Varet Street, Block 3110, Lot 33, Borough of **Brooklyn, Community Board: 1**. Under 72-21-Proposed conversion of an existing manufacturing building (UG17) to legalized residential apartment on the second and third floors and manufacturing on the first floor (UG17D).

40-06-BZ

10 Hanover Square, Easterly block front of Hanover Square between Water Street and Pearl Street, Block 31, Lot 1, Borough of **Manhattan, Community Board: 1**. (SPECIAL PERMIT)73-36-To allow the operation of a PCE with membership limited to employees of Goldman Sachs and residents.

41-06-BZ

139-24 Booth Memorial Avenue, South side of Booth Memorial Avenue and west side of 141 Street, Block 6410, Lot 19,21,24,25,26,28..., Borough of **Queens, Community Board: 7**. Under 72-21-To permit the erection of an accessory group parking facility with roof-top parking which does not comply with height and setback, front yard, rear yard, side yard and lot coverage.

42-06-BZ

56-45 Main Street, West side of Main Street between 56th and Booth Memorial Avenues., Block 5165, Lot 1, Borough of **Queens, Community Board: 7**. Under 72021-To permit the erection of a five story 97,219 sf hospital facility which does not provide the required rear yard equivalent and sky exposure plane.

43-06-BZ

31-09 35th Avenue, Northerly side of 35th Avenue 80'10" east of 31st Street, Block 608, Lot 3.4, Borough of **Queens, Community Board: 1**. Under 72-21-To allow the enlargement of an existing church to meet the needs, as the structure is not adequate to provide proper facilities for the members, that relates to lot coverage, front wall height, front and side yards and parking.

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

APRIL 25, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 25, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

265-59-BZ

APPLICANT – Martyn & Don Weston, for 11 College Place, Inc., owner.

SUBJECT – Application December 12, 2005 - Extension of term for a variance to permit an eight car garage located in a residential building. The premise is located in an R7-1/LH-1 zoning district.

PREMISES AFFECTED – 11 College Place, west side 89'-6" north of Love Lane, Block 236, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEALS CALENDAR

263-03-A

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

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

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

COMMUNITY BOARD #7BK

361-05-BZY

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

SUBJECT – December 19, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R.§110331 under the prior R5 zoning district. Current R5B zoning district.

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

COMMUNITY BOARD #7BK

361-05-A

APPLICANT – Greenberg & Traurig, LLP for Prospect

Terrace LLC, owner.

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

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

COMMUNITY BOARD #7BK

APRIL 25, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 25, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

351-04-BZ

APPLICANT - The Agusta Group, for Stahva Realty, owner.

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

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

COMMUNITY BOARD #11Q

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 ZR §§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

Jeff Mulligan, Executive Director

APRIL 26, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing,

CALENDAR

Wednesday morning, April 26, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL HEARING

334-05-BZ

APPLICANT – Kramer Levin Naftalis & Frank, LLP, for The Whitney Museum of American Art, owner.

SUBJECT – Application November 23, 2005 - Zoning Variance (use & bulk) pursuant to Zoning Resolution Section §72-21 to facilitate the expansion of an existing museum complex including the construction a nine (9) story structure located in C5-1(MP) and R8B (LH-1A) zoning districts. The proposed variance would allow modifications of zoning requirements for street wall height, street wall recess, height and setback, mandatory use, and sidewalk tree regulations; contrary to ZR § § 24-591, 99-03, 99-051, 99-052, 99-054, 99-06.

PREMISES AFFECTED – 933-945 Madison Avenue, 31-33 East 74th Street, East side of Madison Avenue between East 74th and East 75th Streets, Block 1389, Lots 21, 22, 23, 24, 25, 50, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 14, 2006
10:00 A.M.**

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

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, January 10, 2006, were approved as printed in the Bulletin of January 19, 2006, Volume 91, Nos. 1-3.

SPECIAL ORDER CALENDAR

384-74-BZ

APPLICANT – Sheldon Lobel, P.C., for R. M. Property Management, Inc., owner.

SUBJECT – Application May 18, 2005 – Extension of Term of a public parking lot and an Amendment of a Variance Z.R. §72-21 to increase the number of parking spaces and to change the parking layout on site. The premise is located in an R4A zoning district.

PREMISES AFFECTED – 3120 Heath Avenue, southwest corner of Shradly Place, Block 3257, Lot 39, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an amendment to the previously granted variance, and an extension of term; and

WHEREAS, a public hearing was held on this application on December 6, 2005, after due notice by publication in *The City Record*, laid over to January 10, 2006, February 14, 2006 and then to decision on March 14, 2006; and

WHEREAS, Community Board No. 8, Bronx, recommends approval of this application; and

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

WHEREAS, the premises is located on the south side of Heath Avenue, west of Shradly Place; and

WHEREAS, the site is located within an R4-A zoning district and is improved upon with a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 4, 1975 when, under the subject calendar number, the Board granted an application for the

subject lot to permit a public parking lot with 20 spaces; and

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

WHEREAS, most recently, on October 24, 1995, the Board granted an extension of term to expire on May 20, 2005; and

WHEREAS, in addition to a new extension of term, the applicant requests an increase in the number of parking spaces to 34, stating that this amount of spaces is needed to accommodate the amount of cars currently parking in the lot; and

WHEREAS, the Board, after reviewing the site plan, determined that it could only accommodate 27 parking spaces, based upon its lot area and the actual amount of space to be used for parking; and

WHEREAS, the applicant attempted to provide evidence that the 34 spaces were necessary based upon current leases, but upon further review, the Board determined that this evidence was unconvincing; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the requested extension of term and an increase in the amount of spaces to 27 appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 4, 1975, as subsequently extended, so that as amended this portion of the resolution shall read: “to permit the maintenance of a parking lot, with a maximum of 27 parking spaces, and to extend the term for ten years from May 20, 2005, to expire on May 20, 2015, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received February 22, 2006’–(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on May 20, 2015;

THAT the lot shall contain a maximum of 27 parking spaces;

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

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

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

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. 200946085)

Adopted by the Board of Standards and Appeals, March 14, 2006.

MINUTES

617-80-BZ

APPLICANT – Eric Palatnik, P.C., for J & S Simacha, Inc., owner.

SUBJECT – Application May 12, 2005 – Application for an extension of time to complete construction and obtain a certificate of occupancy.

PREMISES AFFECTED – 770/780 McDonald Avenue, west side 20’ south of Ditmas Avenue, Block 5394, Lots 1 and 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, the subject site is located on the west side of McDonald Avenue, south of Ditmas Avenue, and is within an M1-1 zoning district; and

WHEREAS, on December 9, 1980, the Board granted an application under the subject calendar number pursuant to ZR §§72-21 and 73-50, to permit the maintenance of an existing non-complying catering hall; and

WHEREAS, subsequently, under the subject calendar number, a number of site conditions were legalized, and the Board granted extensions of term twice, most recently on April 15, 2003 for a term of two years, expiring on April 15, 2005; and

WHEREAS, the resolution for the last extension required that a certificate of occupancy be obtained within two years of the date of the grant; and

WHEREAS, the applicant represents that due to unforeseen construction delays, construction has not been completed since the grant date; and

WHEREAS, however, the applicant represents that the owner is now able to resume and complete construction; and

WHEREAS, based upon the above, the Board finds it appropriate to grant the requested extension of time.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 15, 2003, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy, for an additional period of two years from the date of this resolution, to expire on March 14, 2008; *on condition*:

THAT a new certificate of occupancy shall be obtained within two years from the date of this grant;

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. 300540029)

Adopted by the Board of Standards and Appeals, March 14, 2006.

1-95-BZ

APPLICANT – Francis Angelino, Esq., for 117 Seventh Avenue So. Property, LLP, owner, TSI Sheridan, Inc. d/b/a NY Sports Club, lessee.

SUBJECT – Application October 6, 2006 – Extension of Term/Waiver for a Physical Cultural Establishment located in a C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, corner of West 10th Street and Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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 of the previously granted special permit that expired on September 20, 2004; and

WHEREAS, a public hearing was held on this application on February 28, 2006, after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, Community Board No. 2, Manhattan, supports this application; and

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

WHEREAS, the subject premises is located at the southeast corner of Seventh Avenue South and West Tenth Street; and

WHEREAS, on June 13, 1995, the Board granted a special permit application pursuant to ZR § 73-36, to permit, in a C4-5 zoning district, the use of the cellar and the second and third floors of the existing three-story commercial building as a physical culture establishment (“PCE”); and

WHEREAS, the instant application seeks to extend the term of the special permit for ten years; and

MINUTES

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, and reopens and amends the resolution, dated June 13, 1995, so that as amended this portion of the resolution shall read: "to grant an extension of the term of the special permit for a term of ten years; *on condition* that the use and operation of the PCE shall substantially conform to drawings as filed with this application, marked 'Received March 9, 2006'-(6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years from June 13, 2005, expiring June 13, 2015;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 14, 2006.

364-36-BZ, Vol. II

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

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

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

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 16, 2006, at 10 A.M., for adjourned hearing.

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.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for continued hearing.

374-71-BZ

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

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

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for adjourned hearing.

263-98-BZ

APPLICANT – Rothkrug Rothkrug Weinberg Spector, for Joseph Elegudin, owner.

SUBJECT – Application November 18, 2005 – Extension of time to complete construction pursuant to Special Permit Z.R. §73-622 for an enlargement of a single family home which expired on September 9, 2005; and for an amendment to the previously approved plans to add an elevator to the residence.

The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 118 Oxford Street, 115' south of intersection with Shore Boulevard, Block 8757, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 11, 2006, at 10 A.M., for decision, hearing closed.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP,

MINUTES

for White Castle Systems, Inc., owner.

SUBJECT – Application November 22, 2005 – Extension of Term/Waiver/Amendment to a previously granted special permit for a drive-through facility accessory to an eating and drinking establishment for an additional term of five years. The amendment is to install and electronic amplification menu board. The premise is located in a C1-2 in an R-4 zoning district.

PREMISES AFFECTED – 38-02 Northern Boulevard, southwest corner formed by the intersection of Northern Boulevard, Block 1436, Lot 1, Flushing, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jeanine Margiano and Oliver Eichorn.

ACTION OF THE BOARD – Laid over to May 25, 2006, at 10 A.M., for continued hearing.

165-02-BZ thru 190-02-BZ

APPLICANT – Stuart A. Klein, Esq./Steve Sinacori, Esq., for Park Side Estates, LLC., owner.

SUBJECT – Application March 31, 2005 – Reopening for an amendment to BSA resolution granted under calendar numbers 167-02-BZ, 169-02-BZ, 171-02-BZ, 173-02-BZ and 175-02-BZ. The application seeks to add 5 residential units to the overall development (encompassing lots 21 and 28) for a total of 37, increase the maximum wall height by 2'-0", and increase the number of underground parking spaces from 11 to 20, while remaining complaint with the FAR granted under the original variance, located in an M1-1 zoning district.

PREMISES AFFECTED – 143-147 Classon Avenue, a/k/a 380-388 Park Avenue and 149-159 Classon Avenue, southeast corner of Park and Classon Avenues, Block 1896, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Steven Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 25, 2006, at 10 A.M., for decision, hearing closed.

148-03-BZ

APPLICANT – Francis R. Angelino, Esq., for North West Real Estate, LLC, owner.

SUBJECT – Application August 18, 2005 – Reopening for an amendment to a previously approved five story and penthouse mixed commercial and residential building to add a mezzanine in the residential penthouse, located in an M1-6 zoning district.

PREMISES AFFECTED – 111/13 West 28th Street, between Sixth and Seventh Avenues, 164'-4" west of Sixth Avenue, Block 804, Lots 1101-1105 (formerly 28 and 29), Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino and David W. Sinclair.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

ACTION OF THE BOARD - Laid over to April 4, 2006, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

189-05-A

APPLICANT – James Periconi for Olive Freud, Hudson Waterfront Associates, owners et al.

SUBJECT – Application filed on September 7, 2005 – An appeal challenging the Department of Building's issuance of Temporary Certificate of Occupancies for 240 Riverside Boulevard (Building A) before the completion of the roadway connection between 72nd Street and Riverside Boulevard.

PREMISES AFFECTED – 240 Riverside Boulevard, (Building A), Block 1171, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a final determination of the Manhattan Borough Commissioner, dated August 12, 2005 (the "Final Determination"); and

WHEREAS, a public hearing was held on this application on February 7, 2005 after due notice by publication in *The City Record*, and then to decision on March 14, 2006; and

WHEREAS, the Final Determination was issued in response to a request from the appellant that the Department of Buildings ("DOB") rescind two temporary certificates of occupancy (Nos. 101236002T001 and 101236002T002, collectively, the "TCOs") issued to a 31-story residential building ("Building A") at the subject premises; and

WHEREAS, as reflected in the Final Determination, the Manhattan Borough Commissioner denied this request because there was no basis to rescind the TCOs; and

WHEREAS, Building A is located within a planned general large-scale development of residential and commercial uses, comprised of 15 development parcels, facing Riverside Drive South (the "development"); and

WHEREAS, on October 26, 1992, the City Planning Commission ("CPC") approved certain special permits related to the development (the "special permits"); and

MINUTES

WHEREAS, the CPC resolution approving the special permits states that the development must be constructed in accordance with plans set forth in the CPC resolution; that the development must include mitigation measures as set forth in the Final Environmental Impact Statement prepared for the development (the "FEIS"); and that the development would be allowed only after a restrictive declaration is recorded and filed; and

WHEREAS, CPC approved changes to the City Map in order to extend the existing street system into the development site, and to eliminate several streets in order to consolidate the development parcels, and also amended ZR Zoning Map 8c to allow for higher density at the development; and

WHEREAS, on December 17, 1992, the owner of the premises, as required by the special permits, entered into a restrictive declaration concerning the development, restricting its construction in a manner consistent with the special permits, the City Map change, and the rezoning; and

WHEREAS, on May 27, 1998, the City and the owner entered into a mapping agreement, in which the owner agreed to perform work "substantially in accordance with" the requirements set forth in a NYC Department of Transportation ("DOT") letter dated January 23, 1998; said mapping agreement was accepted by CPC on July 16, 1998; and

WHEREAS, DOB issued excavation, foundation and structural framing permits for Building A under Application No. 101236002 on July 1, 2002, and under Application Nos. 103177893 and 103173888 on August 1, 2002, and a builder's pavement plan permit on July 24, 2002 (collectively, the "DOB permits"); and

WHEREAS, in a prior appeal before the Board, brought under BSA Cal. No. 134-03-A, the appellant (the same appellant as in the instant appeal) claimed that the special permits and the mapping agreement contained a condition providing that the developer of the premises must undertake the work necessary to connect Riverside Boulevard to 72nd Street in conjunction with the construction of Building A, as well as close the off ramp from Riverside Drive to 72nd Street, and further claimed that DOB must ensure that construction of the road connection, and the ramp closure, occur simultaneously with the building construction; and

WHEREAS, on this basis, the appellant asked the Board to overturn DOB's refusal to revoke the DOB permits; and

WHEREAS, the Board denied the appeal on October 21, 2003, finding that DOB properly issued the DOB permits, and that there was no requirement in any of the above-mentioned agreements, special permits or related actions that the ramp be closed or the roadway be constructed prior to their issuance; and

WHEREAS, the Board's decision was challenged in an Article 78 proceeding; and

WHEREAS, while the litigation was being resolved, a major portion of the construction of Building A was completed, and DOB issued the subject TCOs; and

WHEREAS, the appellant now challenges DOB's issuance of the TCOs, based upon the following arguments:

(1) DOB failed to review the alleged traffic burden arising from the occupancy of Building A before closure of the ramp and connection of the roadway, as is allegedly required by Building Code Section 27-218 (which authorizes DOB to issue TCOs so long as the part of the premises covered by the TCO is deemed safe for occupancy); (2) DOB failed to determine that all permitted work is complete and that such work substantially complies with approved plans and all applicable law, as is allegedly required by Section 27-218; and (3) the BSA, in the prior appeal, stated that DOB should not issue a TCO for Building A prior to completion of the roadway connection; and

WHEREAS, as to the first argument, the appellant states that DOB's issuance of the TCOs was an abuse of its discretion in that DOB did not require any information as to when the roadway connection would be completed even though the TCOs allow residents to occupy Building A and also to allegedly park up to 144 cars; and

WHEREAS, Section 27-218 provides that DOB may issue a TCO for "a part or parts of a building before the entire work covered by the permit shall have been completed, provided that such part or parts may be occupied safely prior to completion of the building and will not endanger public safety, health or welfare"; and

WHEREAS, DOB disputes that 27-218 imposes any requirement upon it to assess environmental impacts such as potential traffic concerns; and

WHEREAS, DOB notes that upon issuing a TCO, it is only required to evaluate whether tenants may safely occupy a part of a building prior to full completion of all work; and

WHEREAS, the Board agrees with DOB: there is no requirement in Section 27-218 that would require DOB to research, or solicit data from the permit applicant about, potential parking and/or traffic impacts; and

WHEREAS, the Board notes that Section 27-218 solely addresses the safety, health and welfare of the occupants of the building parts that would be occupied under a TCO; and

WHEREAS, unlike a discretionary review agency such as the Board, DOB, when issuing permits or TCOs, is not required to evaluate the potential environmental impacts like traffic and parking that a proposal might generate; and

WHEREAS, finally, the Board observes that appellant makes no argument that Building A is not safe for occupancy; and

WHEREAS, accordingly, the Board finds that appellant's first argument is without merit; and

WHEREAS, as to the second argument, the appellant states that the owner of Building A will, in bad faith, pursue further TCOs without any intention of obtaining a final CO, and that DOB is complicit in this process, which is a further abrogation of DOB's responsibility under Section 27-218; and

WHEREAS, the appellant seems to imply that DOB must, upon issuing a TCO, make a determination that all work conforms to applicable laws, because the developer can not be trusted; and

WHEREAS, DOB responds that both the Building Code and the City Charter provide that a certification as to

MINUTES

conformance with all applicable laws is not the standard for issuance of a TCO; instead, DOB has the discretion to issue a TCO upon finding that a building or part of a building is safe for occupancy though all work has not been completed; and

WHEREAS, again, the Board agrees with DOB, for the reason given; and

WHEREAS, accordingly, the Board finds that appellant's second argument is without merit; and

WHEREAS, as to the third argument, the appellant cites to various comments made by former commissioners on the record while Cal. No. 134-03-A was being heard; and

WHEREAS, the appellant argues that the comments should be taken as an expression of the Board's concern that no TCO be issued for Building A until the roadway connection was constructed; and

WHEREAS, however, the resolution issued for the Board's decision as to the prior appeal makes no mention of this alleged concern, nor does it prohibit the issuance of a TCO for Building A; and

WHEREAS, the Board observes that the resolution is the official return of the Board as to the substance of any matter before it; and

WHEREAS, the Board finds that that the individual comments of commissioners at hearing, especially when taken out of context or when tangentially related to the issue before it, should not be construed as binding orders upon DOB; and

WHEREAS, moreover, as correctly noted by counsel to the developer, the decision to issue a TCO is a power of the DOB Commissioner or Borough Commissioner; none of the comments cited by the appellant suggest that DOB could not exercise its authority to issue one; and

WHEREAS, further, with one exception, none of the comments concerned issuance of a TCO, but were rather addressed towards issuance of a final CO; and

WHEREAS, accordingly, the Board finds that appellant's third argument is without merit; and

WHEREAS, subsequent to the first hearing on the matter, the appellant submitted copies of the Mapping Agreement, the CPC Resolution granting the 1992 Special Permit, and portions of the FEIS; and

WHEREAS, the appellant states that the provided documents support the contention that DOB had the responsibility to ensure that the roadway connection would be completed in time to accommodate the traffic impacts that would result from the development at the subject premises; and

WHEREAS, DOB responded that none of the submitted documents require construction of the roadway connection prior to issuance of a TCO for Building A; and

WHEREAS, the Board has reviewed the documents and agrees that no such requirement is present in any of them; and

WHEREAS, nor does the Board find persuasive appellant's argument that such a requirement might not be explicitly imposed in such documents, but that it should be inferred nonetheless; and

WHEREAS, additionally, the Board notes DOB's submission into the record of a June 17, 2005 letter from CPC Commissioner Burden to DOB Commissioner

Lancaster, which states that the developer of Building A was free to file for a TCO, as it had satisfied obligations in the restrictive declaration; and

WHEREAS, the Board observes that no such letter would have been issued by CPC had that agency been concerned that any of the documents submitted by appellant prevented issuance of a TCO until the roadway connection was constructed; and

WHEREAS, accordingly, the Board finds that appellant's final argument is without merit; and

WHEREAS, the Board notes that the appellant, by letter dated February 28, 2006, asked the Board to delay decision until DOT approval of the roadway connection, which the appellant believes could occur sometime in the middle of 2006; and

WHEREAS, however, because the instant appeal is meritless, the Board sees no reason to delay its denial.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated August 12, 2005, refusing to rescind the subject TCOs, is hereby denied.

Adopted by the Board of Standards and Appeals, March 14, 2006.

198-05-A

APPLICANT – Sheldon Lobel, P.C., for Huyian Wu, owner.
SUBJECT – Application August 22, 2005 – Proposed construction and enlargement of an existing one family dwelling, not front on mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED – 6 Cornell Lane, a/k/a 43-06 Cornell Lane, Eastern side of Cornell Lane north of Northern Boulevard, Block 8129, Lot 135, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2005, acting on Department of Buildings Application No. 402142588, reads:

“Respectfully request for consideration for alteration of existing building (Obtain a new C of O) not fronting mapped street in Contrary to General City Law Section 36”; and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, and then to closure and decision on March 14, 2006; and

WHEREAS, by letter dated January 12, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

MINUTES

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 10, 2005, acting on Department of Buildings Application No. 402142588, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 3, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, March 14, 2006.

155-05-A

APPLICANT – Richard Kusack, neighbor; 81 East Third Street Realty, LLC., owner.

SUBJECT – Application filed on June 30, 2005 – for an appeal of the Department of Buildings decision dated May 27, 2005 rescinding its Notice of Intent to revoke the approvals and permit for Application No. 102579354 for a community facility (New York Law School) in that it allows violations of the Zoning Resolution and Building Code regarding bulk, light, air, and unpermitted obstructions in rear yards.

PREMISES AFFECTED – 81 East 3rd Street, Manhattan, Block 445, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 10 A.M., for adjourned hearing.

173-05-A

APPLICANT – Stuart Klein for Trevor Fray, owner.

SUBJECT – Application July 28, 2005 – An appeal seeking a determination that the owner of said premises has acquired a common-law vested right to continue development commenced under the prior R5 zoning district. Current Zoning District is R4A.

PREMISES AFFECTED – 85-24 168th Place, west side of 168th Place, 200 feet south of the corner formed by the

intersection of 18th Place and Gothic Drive. Block 9851, Lot 47, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 10 A.M., for adjourned hearing.

317-05-A

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

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

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

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Kevin Shea, Richard Kosher, Michael Rosen, Eden Ross Lipson, Melissz Baldock and Stephanie Thazer. For Opposition: Richard Born and Irv Gothbaum.

For Administration: Janine Gaylard, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, MARCH 14, 2006 1:30 P.M.

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

MINUTES

ZONING CALENDAR

289-04-BZ

CEQR #05-BSA-031M

APPLICANT – Sheldon Lobel, P.C., for Judo Associates, Inc., lessee.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 – to permit the proposed construction of a seven story mixed-use building, to contain commercial use on the ground floor, and residential use above, located within an M1-5B zoning district, which does permit residential use, is contrary to Z.R. §42-00 and §42-14.

PREMISES AFFECTED – 341 Canal Street, southeast corner of Greene Street, Block 229, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Collins.....4
Negative:.....0

Adopted by the Board of Standards and Appeals, March 14, 2006.

382-04-BZ

APPLICANT – Eric Palatnik, P.C., for Billy Ades, (Contract Vendee).

SUBJECT – Application December 6, 2004 – under Z.R. §73-622 – to permit the proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

PREMISES AFFECTED – 2026 Avenue “T”, corner of Avenue “T” and East 21st Street, Block 7325, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Chin and Commissioner Collins.....4

THE RESOLUTION -

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2004, acting on Department of Buildings Application No. 301861466, reads, in pertinent part:

1. Proposed Plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 75%.
2. Proposed Plans are contrary to Z.R. 23-141(b) in that the proposed Open Space Ratio (OSR) is less than the minimum required 55%.

3. Proposed Plans are contrary to Z.R. 23-461(a) in that the proposed side yards are less than the total of 13’-0”.

4. Plans are contrary to Z.R. 23-141(b) in that the proposed Lot Coverage Ratio (LCR) exceeds the permitted 0.45”; and

WHEREAS, this is an application made under ZR §72-21 to permit, on a site within an R4 zoning district, the enlargement of an existing over-built, two-story plus attic and cellar, single-family dwelling, which will increase the degree of non-compliance as to Floor Area Ratio (FAR), and create new non-compliances as to lot coverage, Open Space Ratio (OSR) and aggregate width of side yards, contrary to ZR §§23-141(a) & (b) and 23-461(a); and

WHEREAS, the application was originally filed as a special permit for a home enlargement pursuant to ZR §73-622; as discussed further below, the Board found that the proposed enlargement was ineligible for this special permit and the applicant subsequently chose to amend the application to request a variance instead; and

WHEREAS, a public hearing was held on this application on July 12, 2005 after due publication in *The City Record*, with continued hearings on August 9, 2005, September 13, 2005, November 29, 2005, January 31, 2006, and then to decision on March 14, 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 Chin; and

WHEREAS, Community Board No. 15, Brooklyn, recommended approval of the initial special permit application, but did not issue a recommendation for the variance application; and

WHEREAS, the subject premises is located at the corner of Avenue T and East 21st Street, with dimensions of 44 ft. along Avenue T, and 60 ft. along East 21st Street, and a total lot area of 2,640 sq. ft.; and

WHEREAS, the site is improved upon with a two-story plus attic and cellar, single-family home, which fronts on East 21st Street; and

WHEREAS, the home features a recreation room, bathroom, utility room and storage rooms in the cellar (which is accessible through an interior staircase), a living room, kitchen, dining room and half-bathroom on the first floor, a master bedroom, two additional bedrooms, and two bathrooms on the second floor, and an office and another room in the attic; the garage is separated from the dwelling and is located in the southern side yard; and

WHEREAS, the home has a total non-complying floor area of 3,001 sq. ft. (FAR of 1.14), a complying lot coverage of 0.40, a complying open space of 1,582 sq. ft. (OSR of 60 percent); two complying side yards of 5’-2” on the west side and 12’-0” on the south side, and two complying front yards of 0’-1” on the north side and 10’-0” on the east side (because the lot is on a corner, no rear yards are required; instead, two side yards and two front yards are required); and

WHEREAS, the applicant proposes an enlargement at the south side of the home into the south side yard, which

MINUTES

would result in the following increase in non-compliance, as well as the following creation of new non-compliances: (1) a floor area of 3,471 sq. ft. (FAR of 1.31) – 1,980 sq. ft. (FAR of 0.75) is the maximum permitted; (2) lot coverage of 0.50 – 0.45 is the maximum permitted; and (3) a side yard on the south side of the building of 5'-0"; a side yard of 7'-10" is required on this side in order to comply with the 13'-0" aggregate side yard requirement; and

WHEREAS, as noted above, the applicant initially sought approval of this proposed enlargement through a special permit pursuant to ZR § 73-622, which authorizes the Board to approve home enlargements that would increase non-complying FAR, lot coverage and side yards; and

WHEREAS, however, at the initial hearing on this application, the Board observed that the proposed enlargement did not meet the parameters of the text set forth at ZR § 73-622; and

WHEREAS, specifically, ZR § 73-622 provides "any enlargement within a side yard shall be limited to an enlargement within an existing non-complying side yard and such enlargement shall not result in a decrease in the existing minimum width of open area between the building that is being enlarged and the side lot line"; and

WHEREAS, the Board observes that its authority to waive side yard provisions under ZR § 73-622 is limited to this section, and that a waiver of the total side yard requirement is not available; and

WHEREAS, the side yard requirements in many of the residential districts where ZR § 73-622 is available, including the subject zoning district, provide that each side yard must be a minimum of 5'-0", and that the aggregate width of all side yards must total at least 13'-0"; and

WHEREAS, the applicant proposes a post-enlargement aggregate width of all side yards of 10'-2"; and

WHEREAS, as stated in the November 7, 2005 letter and Revised Statement of Facts and Findings, the applicant agrees that ZR § 73-622 can not authorize a proposed side yard aggregate width of less than the required 13 feet; and

WHEREAS, moreover, the Board observes the above-cited provision only allows an enlargement that is a straight-line extension of an existing non-complying side yard; that is, the only side yard waiver the Board can allow through the special permit is the an increase in the amount of non-complying side yard so long as the existing width is maintained; and

WHEREAS, the subject property has no existing non-complying side yard which can be extended in this fashion, which means that the Board is without any authority to waive any side yard objection raised by the Department of Buildings as to the proposal; and

WHEREAS, the Board notes that the applicant could still seek a special permit under ZR § 73-622 so long as the enlargement left a 7'-10" side yard on the south side of the lot, instead of the proposed 5'-0" side yard; and

WHEREAS, however, the applicant states that an enlargement that leaves a 7'-10" southern side yard would not afford the owner the room dimensions that he desires

without further expensive interior modifications; and

WHEREAS, accordingly, the applicant changed the application to a request for a variance pursuant to ZR § 72-21; and

WHEREAS, the threshold finding for any variance is set forth at ZR § 72-21(a), which requires the Board to find "that there are unique physical conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to and inherent in the particular zoning lot; and that, as a result of such unique physical conditions, practical difficulties or unnecessary hardship arise in complying strictly with the use or bulk provisions of the Resolution; and that the alleged practical difficulties or unnecessary hardship are not due to circumstances created generally by the strict application of such provisions in the neighborhood or district in which the zoning lot is located"; and

WHEREAS, the applicant alleges that the following is a unique physical condition that leads to practical difficulties in constructing an enlargement to the home at the subject site in strict compliance with underlying district regulations: the lot is only 60 ft. deep, which, when considered in conjunction with the location of the existing building and applicable yards requirements, significantly impacts the ability of the owner to make use of the ZR § 73-622 special permit provision; and

WHEREAS, the Board first observes that the site and the existing home thereupon suffer no inherent hardship whatsoever; instead, the purported problem claimed by the owner results from personal desire, namely, the desire to enlarge an already overbuilt and indisputably habitable home; and

WHEREAS, the Board is aware of the body of case law that establishes that a variance may not be granted based upon the personal wishes of a property owner; and

WHEREAS, specifically, the Board cites to *Hickoz v. Griffin*, 298 N.Y. 365 (1949); *Belgarde v. Kocker*, 627 N.Y.S.2d 128 (3d Dep't 1995); *Fuhst v. Foley*, 45 N.Y.2d 441 (1978); *Quaglio v. La Freniere*, 211 N.Y.S.2d 239 (1960); and *Fromer v. Citrin*, 589 N.Y.S.2d 1003, (2d Dep't 1992), though this is not an exhaustive list of cases that hold that the personal preferences of an owner can not be the basis for a claim of practical difficulties; and

WHEREAS, that the personal preference of the owner is the impetus for the subject application was conceded by the owner at hearing; and

WHEREAS, specifically, the owner testified that the proposed enlargement would allow creation of a third child's bedroom on the second floor, and avoid the placement of the third bedroom in the attic; and

WHEREAS, the owner claimed that this was his preference; and

WHEREAS, the applicant's January 16, 2006 submission confirms that the alleged problem is caused by the preference of the owner; specifically, this submission states "These difficulties include the practical usage of the bedrooms at the attic level for use by the young family which resides therein . . . This proposed small enlargement would

MINUTES

help alleviate this hardship by allowing an additional bedroom on the second floor”; and

WHEREAS, while the owner may prefer that an additional bedroom be located on the same floor as the master bedroom, the Board may not grant a variance when the predicate is this and nothing more; and

WHEREAS, additionally, the Board rejects the shallow depth of the lot as a unique physical condition that leads to hardship; and

WHEREAS, while the applicant has gone to great lengths to establish that the site is one of the few comparably shallow lots in the neighborhood, no nexus between the lot’s status as a shallow lot and any actual hardship has been established; and

WHEREAS, in fact, the home on the lot currently enjoys non-complying status as to floor area (it is already 1,020 sq. ft. larger than otherwise permitted in the subject zoning district), and is usable for its intended residential purpose; and

WHEREAS, as noted above, it has approximately 3,000 sq. ft. of livable floor area, three bedrooms, and a room for a fourth bedroom and/or a modest office in the attic; and

WHEREAS, the applicant attempted to argue that the home was one of the few in the immediate area that was constrained by lot size from enlarging; and

WHEREAS, in support of this argument, the applicant submitted a study of 28 homes in the area (including the subject home); and

WHEREAS, the Board notes that of the 27 other homes studied by the applicant, approximately 40 percent are similarly constrained in terms of their ability to be enlarged due to the size of the lot and the amount of yard available for expansion; thus, the size of the lot is not a unique condition that leads to any inherent hardship; and

WHEREAS, the applicant also contends that the attic level is not fully usable due to a sloped roof, and that the unusable space should be discounted by the Board in its assessment of the habitability of the home; and

WHEREAS, specifically, the applicant argues that only thirty-three percent of the 987 sq. ft. of zoning floor area at the attic level rises to a full ceiling height; and

WHEREAS, the applicant contends that this reflects the attic’s “obsolete” design; and

WHEREAS, however, the Board observes that in the course of other applications, it has reviewed many other homes with similar attic conditions, with attic floor space that counts as zoning floor area; and

WHEREAS, the Board has never considered such attic space to be a unique physical condition that leads to a practical difficulty for purposes of a variance; and

WHEREAS, the Board observes that houses in Brooklyn come in many sizes and configurations, and merely establishing that a space within a house is less than optimum when measured against the personal desire of an owner is not a valid basis for a claim of hardship; and

WHEREAS, further, the Board observes that the attic condition present in the home is typical of other homes in the area; and

WHEREAS, in fact, the applicant’s study of the nearby homes indicates that similarly sized homes in the neighborhood appear to have either the same constrained attic space, in that they either also have a peaked roof with gables, or they only have a peaked roof, and thus do not even enjoy the possibility of usable attic space; and

WHEREAS, specifically, 16 homes cited by the applicant have “peaked roofs only”, which means that they provide even less habitable space than the subject home; and

WHEREAS, thus, it can not be said that the subject home is disadvantaged on the basis of the size of its attic when compared to neighboring buildings, since many of the buildings do not even have attics; and

WHEREAS, accordingly, the Board does not consider this to be a unique condition that causes hardship; and

WHEREAS, finally, the Board observes that while some of the floor area in the attic may not rise to a full ceiling height, it is nonetheless usable for a variety of purposes, such as an office (where one might sit rather than stand) or as a child’s bedroom (children often being shorter than adults); and

WHEREAS, the applicant makes the further argument that the overall home is smaller and thus functionally obsolete, when compared with other homes in the area; and

WHEREAS, however, the Board is not persuaded that the overall size of the subject home is a hardship relative to other properties; and

WHEREAS, in fact, the record reveals that the floor area even without considering the attic floor area is comparable to many other homes in the area; and

WHEREAS, again, a review of the homes cited in the applicant’s study reveals that approximately 75 percent have a total floor area of between 1330 to 1980 sq ft., which is either less than or equal to the amount of floor area in the subject home if the attic floor area is subtracted; and

WHEREAS, thus, this condition is also not unique; and

WHEREAS, finally, the Board does not consider the alleged inability to use the home enlargement special permit a hardship for purposes of a variance, as the applicant seems to suggest; and

WHEREAS, the Board has not previously credited an inability to use a special permit as the basis for a variance, since this is contrary to both ZR § 72-21 and established case law as to variances; and

WHEREAS, many of the special permit provisions set forth in the Zoning Resolutions establish prerequisites; that some sites meet the prerequisites and others nearby do not is evidence only of the occasionally arbitrary nature of zoning regulations in general, but it is not the basis of a practical difficulty claim; and

WHEREAS, a contrary view would obviously lead to absurd results; for instance, ZR § 73-621 allows the Board to authorize an enlargement to a non-complying or complying residential building within most residential zoning districts so long as the building existed on December 15, 1961; and

WHEREAS, an owner of a residential building in a R1 zoning district constructed in 1962 thus could not use this special permit provision; and

MINUTES

WHEREAS, while this might be the impetus for said owner to seek a variance for the enlargement, the inability to use the special permit is merely the motivation; it can not be the basis on which the Board grants the variance; and

WHEREAS, the instant application presents an analogous situation: confronted with an inability to use a special permit, the owner was motivated to seek a variance; and

WHEREAS, however, the Board has no authority to accept this inability as the basis of a practical difficulty claim; and

WHEREAS, during the course of the hearing process, the applicant made an additional argument; and

WHEREAS, specifically, in the February 27, 2006 submission, the applicant cites to ZR § 23-52, which permits a reduction in the rear yard for a shallow interior lot; and

WHEREAS, the applicant concedes that said provision has no applicability to the subject corner lot, but appears to argue that when the drafters of the ZR considered shallow interior lots as deserving of allowance on the provision of rear yards, they were intending to avoid penalizing undersized zoning lots which could not accommodate required yards; and

WHEREAS, the applicant states that this supports the notion that the dimensions of the subject lot are unique and that they give rise to hardship; and

WHEREAS, the problem with this argument is that despite the allegedly constraining lot dimensions, the site is generously developed with an over-built, indisputably habitable home with three bedrooms, an attic office and a cellar recreation room, and possesses complying yards on all sides; and

WHEREAS, additionally, whatever problems corner lots experience in terms of development has already been addressed through the exemption of a rear yard requirement; and

WHEREAS, accordingly, the Board does not find this argument persuasive; and

WHEREAS, since the application fails to meet the finding set forth at ZR §72-21 (a), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the finding set forth at Z.R. § 72-21(a), which is the threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, dated November 17, 2004, acting on Department of Buildings Application No. 301861466, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, March 14, 2006.

160-04-BZ/161-04-A

APPLICANT – Mitchell S. Ross, Esq., Agusta & Ross, for Daffna, LLC, owner.

SUBJECT – Application April 21, 2004 – under Z.R. §72-21 to permit, in an M1-2 zoning district, the residential

conversion of an existing four-story commercial loft building into eight dwelling units, contrary to Z.R. §42-10.

PREMISES AFFECTED – 73 Washington Avenue, East side of Washington Avenue 170’ north of Park Avenue, Block 1875, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

245-04-BZ

APPLICANT – Agusta & Ross, for Mark Stern, owner.

SUBJECT – Application July 6, 2004 – under Z.R. §72-21 – to permit the proposed five-story, nine unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 102/04 Franklin Avenue, west side, 182’ south of Park Avenue, Block 1898, Lots 45 and 46, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for continued hearing.

286-04-BZ & 287-04-BZ

APPLICANT – Rothkrug Rothkrug Weinberg & Spector, LLP for Pei-Yu Zhong, owner.

SUBJECT – Application August 18, 2004 – under Z.R. §72-21 to permit the proposed one family dwelling, without the required lot width and lot area is contrary to Z.R. §23-32.

PREMISES AFFECTED –

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

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

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for adjourned hearing.

338-04-BZ

APPLICANT – Martyn & Don Weston, for Hi-Tech Equipment Rental Inc., owner.

SUBJECT – Application October 12, 2004 – under Z.R. §72-21 to permit the proposed construction of a one story and cellar extension to an as-of-right six story hotel, and to permit

MINUTES

on grade accessory parking and below grade showroom/retail use, in an R5 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED – 806/14 Coney Island Avenue, west side, 300.75' north of Ditmas Avenue, Block 5393, Tentative Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Don Weston and Jack Freeman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

351-04-BZ

APPLICANT – The Agusta Group, for Stahva Realty, owner. SUBJECT – Application November 1, 2004 – under Z.R. §73-44 – to allow parking reduction for proposed enlargement of existing office building located in an R6B/C2-2.

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Mitchell Ross and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

359-04-BZ

APPLICANT – Eric Palatnik, P.C., for Alfred Savegh, owner.

SUBJECT – Application November 12, 2004 – Under Z.R. §73-622 to permit the legalization of an enlargement to an existing single family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141 and §23-47.

PREMISES AFFECTED – 1425 East 24th Street, between Avenues "N" and "O", Block 7678, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

398-04-BZ

APPLICANT – Eric Palatnik, P.C., for Babavof Avi, owner. SUBJECT – Application December 23, 2004 – under Special Permit Z.R. §73-622 – proposed legalization of an enlargement of a single family residence which causes non-compliance to Z.R. §23-14 for open space and floor area. The premise is located in R2 zoning district.

PREMISES AFFECTED – 2103 Avenue M, northeast corner of East 21st Street, Block 7639, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for continued hearing.

52-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Coptic Orthodox Church of St. George, owner.

SUBJECT – Application March 4, 2005 – under Z.R. §72-21 proposed development of a six-story and cellar building, with community use on floors one through three, residential use on floors three through six, and with parking in the cellar, located in a C1-2 within an R5 zoning district.

PREMISES AFFECTED – 6209 11th Avenue, northeast corner of 63rd Street, Block 5731, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to May 2, 2006, at 1:30 P.M., for continued hearing.

65-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.

SUBJECT – Application March 16, 2005 – Special Permit filed pursuant to sections 11-411 and 11-413 of the zoning resolution to request the reinstatement of an expired, pre-1961, variance, and to request authorization to legalize the change of use from a gasoline service station with accessory automotive repairs, to an automotive repair facility without the sale of gasoline, located in a C1-4/R8 zoning district.

PREMISES AFFECTED – 269-275 East Burnside Avenue, northside of East Burnside Avenue between Ryer Avenue and Anthony Avenue, Block 3156, Lot 85, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

MINUTES

81-05-BZ

APPLICANT – Bryan Cave LLP (Margery Perlmutter, Esq.) for the Lyon Group, LLC, owner.

SUBJECT – Application April 5, 2005 – under Z.R. §72-21 to construct a 7-story plus mezzanine residential building containing 39 dwelling units and 10 accessory parking spaces in an R6 district, contrary to Z.R. §§23-145, 23-632, 23-633, 25-23.

PREMISES AFFECTED – 1061/71 52nd Street, north side, 229' east of Fort Hamilton Parkway, Block 5653, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Stuart Klein.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 25, 2006, at 1:30 P.M., for decision, hearing closed.

132-05-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel and Harold Weinberg.

For Opposition: Judith Baron and Susan Klapper.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

133-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Yitzchok Shindler.

SUBJECT – Application November 30, 2005 – Under Z.R. §73-622 to allow the enlargement of a single family residence which exceeds the allowable floor area and lot coverage per Z.R. §23-141 of the Zoning Resolution. The premise is located in an R-2 zoning district.

PREMISES AFFECTED – 1231 East 21st Street, southeast corner of Avenue K and East 21st Street, Block 7621, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Sondra Safier.

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for continued hearing.

136-05-BZ

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Irving Avenue Holding, LLC, owner.

SUBJECT – Application June 3, 2005 – Under Z.R. §72-21 to construct a two family, two story dwelling which does not comply with the front yard requirement pursuant to Z.R. §23-45 and is less than the required lot width/lot area pursuant to Z.R. §23-32. The premise is located in an R4 zoning district. PREMISES AFFECTED – 1901 Nereid Avenue, corner formed by intersection of the east side of Ely Avenue and North side of Nereid Avenue, Block 5092, Lot 10, Borough of The Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

146-05-BZ

APPLICANT – Howard Weiss, Esq., Davidoff, Malito & Hutcher,LLP, for Spafumiere Inc., lessee, Manhattan Embassy Co., owner.

SUBJECT – Application June 10, 2005 – Approval sought for a proposed physical cultural establishment located on a portion of the first floor of a mixed-use building. The PCE use will contain 2,300 square feet. The site is located in a C1-9 TA Zoning District.

PREMISES AFFECTED – 900 Second Avenue, a/k/a 884-900 Second Avenue, 301-303 East 47th Street, 300-306 East 49th Street, Block 1340, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Weiss.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 11, 2006, at 1:30 P.M., for decision, hearing closed.

179-05-BZ

APPLICANT – Harold Weinberg, P.E., for Steven Goldfarb, owner.

SUBJECT – Application August 3, 2005 – Special Permit pursuant to ZR §73-622 for a two story rear enlargement to a single family semi-detached home to vary Z.R. §23-14 for floor area and open space, Z.R. §23-47 for less than the required rear yard, Z.R. §23-641 for less than the required

MINUTES

side yard and Z.R. §23-631 for total height. The premise is in an R3-1 zoning district.

PREMISES AFFECTED – 139 Langham Street, east side 311’-8 7/8” south of Shore Boulevard, Block 8755, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 28, 2006, at 1:30 P.M., for decision, hearing closed.

194-05-BZ

APPLICANT – David L. Businelli, for Steven Morris, owner.
SUBJECT – Application August 16, 2005 – Under Z.R. §72-21 – Extending the term of variance which expired on November 6, 1997 to permit in an R3-X the continued use of a one story building for retail sales with accessory parking. (Jurisdictional §72-21).

PREMISES AFFECTED – 5525 Amboy Road, North side 442.44’ West of Huguenot Avenue, Block 6815, Lot 85, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 4, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 5:00 P.M.