
BULLETIN

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89-06-A

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90-06-A

9 Bedford Avenue, North side of Bedford Avenue at the intersection of mapped Bayside Drive & Beach 202nd Street, Block 16350, Lot 300, Borough of **Queens, Community Board: 14**. General City Law Section 35-Proposal to permit reconstruction and enlargement of an existing one family dwelling located in the bed of a mapped street

91-06-A

38 Lincoln Walk, West side of Lincoln Walk, 120.5' North of Breezy Point Boulevard, Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 35 - Proposed reconstruction and enlargement of an existing one family dwelling located within the bed of a mapped street

92-06-A

5 Lockman Place, South side of Lockman Place, 123.17' off the intersection of Lockman Place and Lockman Avenue, Block 1236, Lot 122, Borough of **Staten Island, Community Board: 1**. General City Law Section 36-Proposed construction of a two story / two family detached not fronting on a mapped street. Premises is located within R3A Zoning District.

93-06-A

50-08 88th Street, Westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of **Queens, Community Board: 4**. General City Law Section 36 - Permit construction of a building complying with all zoning regulations except fronting a mapped street

94-06-BZ

1221 East 29th Street, East side of East 29th Street, 150' South of Avenue L, Block 7647, Lot 37, Borough of **Brooklyn, Community Board: 14**. Under 73-622 to permit construction of a three story enlargement to a detached single family residence.

95-06-BZ

413-419 West 14th Street, Midblock of 14th and 15th Streets, between Eighth and Ninth Avenues, Block 712, Lot 14, 21, 51, Borough of **Manhattan, Community Board: 4**. Under 72-21 to permit 56 dwelling units through construction of a new mixed use building in an M1-5

96-06-BZ

39 West 56th Street, North side of 56th Street between 5th and 6th Avenues, Block 1272, Lot 14, Borough of **Manhattan, Community Board: 5**. Special Permit 73-36 To permit Physical Culture Establishment in a C5-P

97-06-BZ

153-155 Spring Street, North side of Spring between Wooster and West Broadway, frontage east side of West Broadway., Block 501, Lot 37, Borough of **Manhattan, Community Board: 2**. Special Permit-73-36-To permit the operation of a Physical Culture Establishment (spa).

98-06-BZ

1045 Beach 9th Street, South corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of **Queens, Community Board: 14**. Under 72-21-To permit the proposed four story Yeshiva.

99-06-BZ

575 Madison Avenue, East side of Madison Avenue (full blockfront) between East 56th and East 57th Streets., Block 1292, Lot 52, Borough of **Manhattan, Community Board: 5**. Special Permit-73-36-For a Physical Culture Establishment as an accessory use to a (UG6) store.

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

JULY 11, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 11, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Ruben Greco, owner.

SUBJECT – Application May 11, 2006 - Pursuant to Rules of Practice and Procedure to reopen and amend the resolution for the Extension of Time to Obtain a Certificate of Occupancy, for a bookstore and distribution, which expired on April 12, 2006.

PREMISES AFFECTED – 3030 Jerome Avenue, aka 3103 Villa Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of The Bronx.

COMMUNITY BOARD #7BX

739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Co., owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application May 4, 2006 – Reopening for an extension of term of a special permit pursuant to ZR§73-03 to permit an existing shopping center, the conversion of a retail store to an amusement arcade.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

45-90-BZ

APPLICANT – Walter T. Gorman, P.E., for Red Hook Land LLC, owner; Red Hook Service Station LLC, lessee.

SUBJECT – Application December 20, 2004 - Extension of Time/Waiver-To complete construction and secure a new Certificate of Occupancy

PREMISES AFFECTED – 260 Hamilton Avenue, northeast corner of Henry Street, Block 527, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

129-93-BZ

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

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

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

COMMUNITY BOARD #8M

130-93-BZ

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

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

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

COMMUNITY BOARD #8M

173-95-BZ

APPLICANT – Stephen J. Rizzo, Esq., for 80 East 85th Street Company, owner; David Barton Gym Corp., lessee.

SUBJECT – Application March 10, 2006 - Pursuant to ZR 73-11 & 73-36 for the Extension of Term/Waiver of a Physical Culture Establishment (David Barton Gym) in a portion of the first floor and the entire second floor of a 30 story residential building.

PREMISES AFFECTED – 30 East 85th Street, Madison Avenue and East 85th Street, Block 1496, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

324-01-BZ

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

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

CALENDAR

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

COMMUNITY BOARD #1SI

JULY 11, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 11, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

131-05-BZ

APPLICANT – Law Office of Vincent L. Petraro, for Delco Properties, LLC, owner.

SUBJECT – Application Variance application under Z.R. Section 72-21 to permit a five-story retail/banquet facility/office building of 112,137 square feet and up to 276 attended parking spaces on the two cellar levels. The site is located in a C4-3 zoning district. The proposal is contrary to Z.R. Sections 33-122, 33-432, 36-21, 36-62, and 32-21. The variance waivers requested relate to floor area, front wall height, number of parking spaces, number of loading berths, and the distance from a residence district. There are two existing commercial buildings on the site which will be demolished as part of the proposed action.

PREMISES AFFECTED – 72-01/72-11 Roosevelt Avenue, 37-61/69 72nd Street and 72-18 Broadway, corner of 72nd Street and Broadway, Block 1283, Lot 72, Borough of Queens.

COMMUNITY BOARD #4Q

44-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Philip & Laura Tuffnell, owners.

SUBJECT – Application March 14, 2006 – Pursuant to ZR 72-21 Variance for the vertical enlargement of an existing single family residence which exceeds the maximum permitted floor area, ZR23-141 and does not provide the required side yard, 23-461.

PREMISES AFFECTED – 150-24 18th Avenue, South side of 18th Avenue, 215 east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.

COMMUNITY BOARD #7Q

46-06-BZ

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

SUBJECT – Application March 17, 2006 – Special Permit pursuant to Z.R. Sections 73-03 and 73-36 to allow the

proposed Physical Culture Establishment on the first floor and mezzanine of the subject 12-story commercial building. The first floor and mezzanine are currently vacant. The subject premises is located in a C6-2 zoning district within the Special Clinton District.

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

COMMUNITY BOARD #4M

74-06-BZ

APPLICANT – Sheldon Lobel, P.C., for William Guarinello, owner.

SUBJECT – Application April 24, 2006 - Special Permit pursuant to ZR73-622 for the enlargement of single family residence which exceeds the allowable floor area ratio, lot coverage and open space as per ZR32-141, less than the minimum side yards as per ZR23-461 and less than minimum rear yard as per ZR34-47. This special permit application also purposes to convert from a one family residence to a two family residence.

PREMISES AFFECTED – 1416 80th Street, south side of 80th Street, Block 6281, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #11BK

76-06-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 150 East 58th Street, LLC/Vornado Realty, owner; Sitaras Fitness, LLC, lessee.

SUBJECT – Application April 26, 2006 – Special Permit under Z.R. §73-36 - Proposed physical cultural establishment to be located on a portion of the 11th & 12th floor of a thirty - nine story commercial building. Premises is located within an C5-2 Zoning District.

PREMISES AFFECTED – 150 East 58th Street, south side of East 58th Street, 85 feet east of the corner formed by the intersection of Lexington Avenue and East 58th Street, Block 1312, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 16, 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, March 14, 2006 and Wednesday, Morning March 15, 2006, were approved as printed in the Bulletin of March 24, 2006, Volume 91, No. 12. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

636-54-BZ, Vol. II

APPLICANT – Walter T. Gorman, P.E., for Stephen & Jeanne Tamor (Trustees); Motiva Enterprises, lessee.

SUBJECT – Application February 22, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy of a gasoline service station (Shell Station) for fifty-four (54) months from the expiration date of January 8, 2003. The premise is located in a C1-2 in R-5 zoning district.

PREMISES AFFECTED – 9612/24 Seaview Avenue, southwest corner of Rockaway Parkway, Block 8328, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: John Ronan.

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 time to obtain a new certificate of occupancy which expired on January 8, 2003; and

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since October 16, 1956, when the Board granted an application to permit the erection and maintenance of a gasoline service station, with a lubritorium, auto-washing, motor vehicle repairs, storage and sale of accessories, and the storage of motor vehicles; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on January 8, 2002, for a term of 10 years from the expiration of the prior grant, expiring on October 16, 2011; and

WHEREAS, a condition of the most recent amendment was that a new certificate of occupancy be obtained by January

8, 2003; and

WHEREAS, however the applicant represents that due to management changes, the obligation to secure a new certificate of occupancy for the site was overlooked; and

WHEREAS, at hearing, the Board asked the applicant about an outstanding violation concerning an air compressor tank; and

WHEREAS, the applicant responded that an engineer inspected the site and provided a statement that the air compressor tank had been removed from the station when it was re-built in 1988 and that the violation associated with it was resolved; and

WHEREAS, the Fire Department provided testimony confirming that the air compressor had been removed and that there were no open violations; and

WHEREAS, at hearing, the Board asked the applicant how much time was needed to obtain the certificate of occupancy; and

WHEREAS, the applicant represents that inspections could be scheduled and that a certificate of occupancy could be obtained within 14 months; 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 *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, as adopted on October 16, 1956 under the subject calendar number, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy for an additional period of four years and six months from the prior grant’s expiration, to expire on July 8, 2007, *on condition*:

THAT a new certificate of occupancy shall be obtained by July 8, 2007;

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

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

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

(Alt. No. 301226359)

Adopted by the Board of Standards and Appeals, May 16, 2006.

551-61-BZ

MINUTES

APPLICANT – Fred Geremia, R.A., for SMR Realty Corp., owner.

SUBJECT – Application to consider dismissal for lack of prosecution.

PREMISES AFFECTED – 3275 Cruger Avenue a/k/a 3233 Cruger Avenue, southwest corner of Rosewood Street, Block 4596, Lot 22, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES – None.

ACTION OF THE BOARD – Application dismiss for lack of prosecution.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to extend the term of previous variance pursuant to Z.R. § 11-411; and

WHEREAS, the prior variance was granted on October 3, 1961, and permitted non-transient storage and parking in what was then a residence use district (and is now an R6 zoning district); and

WHEREAS, the grant has been re-opened, extended, and modified since that time, most recently in 1992, when the Board authorized a new ten year term, which has since expired; and

WHEREAS, the application was filed on June 13, 2005 by Fred Geremia, R.A., as the applicant on behalf of the fee owner; and

WHEREAS, subsequent to the filing, the Board’s examination staff sent a Notice of Objections to the applicant, dated September 20, 2005, which requested additional information necessary to for further processing of the application; and

WHEREAS, the applicant did not provide a written response to this Notice; and

WHEREAS, accordingly, the Board placed the matter on the calendar for a dismissal hearing; and

WHEREAS, the examiner notified the applicant of the dismissal hearing date on February 2, 2006 and May 1, 2006; no substantive written response from the applicant was received; and

WHEREAS, because of the applicant’s lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 551-61-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, May 16, 2006.

39-66-BZ

APPLICANT – Sheldon Lobel, P.C., for Andrea Woodner,

owner.

SUBJECT – Application March 28, 2006 - Extension of Time/Waiver to obtain a Certificate of Occupancy, which expired in January 6, 2006, for transient parking of the unused and surplus tenants spaces in the accessory garage of a multiple dwelling building. The premise is located in a R6 zoning district.

PREMISES AFFECTED – 43-70 Kissena Boulevard, Block 5137, Lot 102, Borough of Queens.

COMMUNITY BOARD #7Q

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 waiver of the Rules of Practice and Procedure and an extension of time to obtain a new certificate of occupancy for a transient parking lot, which expired on January 8, 2003;

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to May 16, 2006 for decision; and

WHEREAS, on April 13, 1966, the Board granted a zoning variance and a Multiple Dwelling Law waiver under the subject calendar number to allow transient parking spaces in the cellar level accessory garage to a multiple dwelling located at the subject premises, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times, most recently on January 6, 2004, to permit an extension of time to obtain a certificate of occupancy for an additional two years, to expire on January 6, 2006; and

WHEREAS, the applicant explained that due to a reorganization in the management, the obtainment of the new certificate of occupancy was overlooked; 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 *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, as adopted on April 13, 1966, under the subject calendar number, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy for an additional period of two years from the prior grant’s expiration, to expire on January 6, 2008, *on condition*:

THAT a new certificate of occupancy shall be obtained by January 6, 2008;

THAT there shall be a maximum of 50 parking spaces used for transient parking at the cellar and first floors at the

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subject premises;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT the above condition and all conditions from the prior resolution shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

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

(Alt. 2039-65)

Adopted by the Board of Standards and Appeals, May 16, 2006.

337-79-BZ, Vol. II

APPLICANT – Moshe M. Friedman, P.E., for Dr. Martin S. Bernstein, owner.

SUBJECT – Application January 23, 2006 – Extension of Term/Waiver for the conversion of the first story of an existing two (2) story residential building into medical offices, located in an R2 zoning district.

PREMISES AFFECTED – 2107 Avenue N, north side of Avenue N, 40’ east of East 21st Street, Block 7657, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

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 a previously granted variance that expired on December 16, 2005; and

WHEREAS, a public hearing was held on this application on January 23, 2006, after due notice by publication in *The City Record*, with continued hearing on May 2, 2006, and then to decision on May 16, 2006; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of 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 on the north

side of Avenue N, 40 feet east of 21st Street, and is occupied by an existing two-story building; and

WHEREAS, on December 16, 1980, the Board granted a variance pursuant to ZR § 72-21, to permit, in an R2 zoning district, the conversion of the first floor of the two-story building into medical offices; and

WHEREAS, subsequently, the variance was re-opened twice to extend the term; and

WHEREAS, the instant application initially sought to extend the term of the variance for ten years; and

WHEREAS, upon review, the Board grants the requested renewal of the variance and eliminates the term, provided that there is compliance with the conditions set forth below and on the prior resolutions.

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 December 16, 1980, so that as amended this portion of the resolution shall read: “to renew the grant and eliminate its term; *on condition* that the use and operation of the medical offices shall substantially conform to drawings as filed with this application, marked ‘Received January 23, 2006’–(2) sheets and ‘Received May 4, 2006’–(1) sheet ; and *on further condition*:

THAT this variance shall lapse with any change in ownership or control;

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.”

(Alt. No. 209/1979)

Adopted by the Board of Standards and Appeals, May 16, 2006.

43-99-BZ

APPLICANT – Windels Marx Lane and MittenDorf, LLP, 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

MINUTES

APPEARANCES – None.

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, a reopening, and an extension of the term of the special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 7, 2004, as well as an amendment to allow the installation of an electronic amplification board at the drive through facility; and

WHEREAS, a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, with continued hearings on February 14, 2006, March 14, 2006, and April 25, 2006, and then to decision on May 16, 2006; and

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

WHEREAS, Community Board 3, Queens and the Queens Borough President both recommend approval of this application, on condition that the hours of the amplified board are limited; and

WHEREAS, the site is located on the southwest corner of Northern Boulevard and 88th Street, within a C1-2(R4) zoning district, has a lot area of 10,000 sq. ft., and is occupied by an existing eating and drinking establishment (a White Castle fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and eight accessory parking spaces; and

WHEREAS, on December 7, 1999, under the subject calendar number, the Board granted a special permit authorizing the drive through facility for the restaurant, for a period of five years, which expired on December 7, 2004; and

WHEREAS, in addition to an extension of term, the applicant requests Board approval of a proposed electronically amplified menu board; and

WHEREAS, the applicant states that the restaurant needs the amplified board in order to expedite customer service during peak hours; the installation of the board will allow customers to order first and then proceed to the window; and

WHEREAS, the applicant initially proposed to locate the menu board at the a point in the drive-through lane such that there would only be limited space for three vehicles behind a vehicle stopped at the board, even though the ten required reservoir spaces required by the special permit text would still be provided; and

WHEREAS, the Board expressed concern that such a minimal queuing space could cause vehicles to back up into the driveway or street, and suggested that a revised proposal that increased the amount of spaces be submitted; and

WHEREAS, the Board also expressed concern about the

layout of the accessory parking spaces; and

WHEREAS, the applicant responded by submitting a revised site plan showing a new location for the amplified board that would allow five spaces instead of three; and

WHEREAS, the applicant also submitted evidence that the average time that it takes a customer to order at White Castle restaurants in the area is 40 seconds; and

WHEREAS, the applicant states that based upon its review of peak hour usage of various White Castle drive through facilities, including the subject facility, five queuing spaces after the menu board is sufficient to cover the amount of customers, based upon an average 40 second ordering time; and

WHEREAS, specifically, based upon this review, the applicant stated that at the subject location, only eight vehicles used the drive-through facility during the busiest hour of the day, and at no point was there more than one car in the facility; and

WHEREAS, the applicant also reconfigured the accessory parking, so that certain of the spaces near the entrance driveway are positioned perpendicularly, which will enhance vehicle access and maneuverability on the site; and

WHEREAS, at the request of the Board, the remainder of the spaces will be angled; 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, *waives* the Rules of Practice and Procedure, and *reopens and amends* the resolution, said resolution having been adopted on December 7, 1999, 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 December 7, 2004, and to permit the installation of an amplified menu board and the reconfiguration of accessory parking; *on condition* that all work and site conditions shall comply with drawings marked "Received May 10, 2006"- (1) sheet; 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 premises shall be maintained free of debris and graffiti;

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

THAT there shall be a minimum of seven accessory parking spaces located at the site;

THAT the amplified board shall only be used from 7 AM to 9 PM on weekdays, and from 8AM to 9 PM on Saturday and Sunday;

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;

MINUTES

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. 402100249)

Adopted by the Board of Standards and Appeals, May 16, 2006.

370-03-BZ

APPLICANT – Fischbein Badillo Wagner Harding for Metroeb Realty Corp., owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED –143-153 Roebling Street, aka 17-19 Hope Street, east side of Roebling between Hope Street and Metropolitan Avenue, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, May 16, 2006.

379-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Hieronima Rutkowska, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED –107 Debevoise Avenue (aka 20Division Place), southwest corner of Debevoise Avenue and Division Place, Block 2849, Lot 15, Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, May 16, 2006.

143-05-A

APPLICANT – Eric Palatnik, P.C., for Andrew Latos & Peter Latos, owners.

SUBJECT – Application February 15, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 29, 2005 BSA granted issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 4021124879 and reinstated the permit for a period of six months to expire on May 29, 2006. The premise is located in a R2A zoning district.

PREMISES AFFECTED – 47-05 Bell Boulevard, between 47th and 48th Avenues, Block 7346, Lot 49, Borough of Queens.

COMMUNITY BOARD #11Q

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 is an application for an extension of the time to complete construction previously granted by the Board upon a November 29, 2005 determination under the subject calendar number that the owner of the subject premises has obtained a vested right to continue construction under Department of Buildings (“DOB”) Permit No. 4021124870 (the “Permit”); and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, the subject premises is a 2,300 sq. ft. lot located on Bell Boulevard between 47th and 48th Avenues; and

WHEREAS, the subject premises is occupied by an existing two-family dwelling that is proposed to be converted into a three-family dwelling under the Permit; and

WHEREAS, at the time that the Permit was issued (March 13, 2005), the premises was within an R3-2 zoning district, where such conversion was permitted; and

WHEREAS, on April 12, 2005, the City Council approved the rezoning proposal for the subject neighborhood; consequently, the subject premises is now within an R2A zoning district, where the conversion is not permitted; and

WHEREAS, because of the rezoning, the applicant subsequently filed an application for a finding that the owner had vested rights under the Permit, stating that vested rights to proceed under the Permit had been acquired based upon the amount of work performed and the amount of expenditures made; and

WHEREAS, the Board granted this application on November 29, 2006, ordered that the Permit be reinstated, and allowed six months for the completion of construction; the grant will expire on May 29, 2006; and

WHEREAS, the applicant states that although work recommenced following the Board’s reinstatement of the Permit, full completion of construction was not achieved

MINUTES

because of a change in architect and related delays in making appropriate filings at DOB; and

WHEREAS, the applicant states that it will likely take approximately one year to finish construction and obtain necessary DOB sign-offs; and

WHEREAS, at hearing, the Board requested photographs of the work that has been completed since the original reinstatement; and

WHEREAS, the applicant submitted photos of the work, which the Board has reviewed; the Board agrees that progress has been made since the original reinstatement; and

WHEREAS, in sum, the Board finds it appropriate to grant the requested extension of time, since good faith efforts to complete construction have been made since the original reinstatement.

Therefore it is Resolved that the Board reinstates DOB Permit No. 4021124870 for a period of one year from date of the expiration of the original reinstatement, to expire on May 29, 2007, subject to DOB review and approval of plans associated with the Permit.

Adopted by the Board of Standards and Appeals, May 16, 2006.

149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application February 21, 2006 – Extension of Time to complete construction and to obtain a Certificate of Occupancy. On November 1, 2005 BSA issued a resolution determining that the owner of the premises had obtained a vested right to continue construction under DOB permit No. 401867618 and reinstated the permit for a period of six months to expire on May 1, 2006. The premise is located in an R2A zoning district.

PREMISES AFFECTED – 32-29 211th Street, east corner of 32nd Avenue and 211th Street, Block 6061, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

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 is an application for an extension of the time to complete construction previously granted by the Board upon a November 1, 2005 determination under the subject calendar number that the owner of the subject premises has obtained a vested right to continue construction under Department of Buildings (“DOB”) Permit No. 401867618 (the “Permit”); and

WHEREAS, a public hearing was held on this application

on April 25, 2006, after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, the subject premises is a 4,500 sq. ft. lot located on the east side of 211th Street, south of 32nd Avenue; and

WHEREAS, the subject premises is occupied by an existing one-family dwelling that is proposed to be enlarged under the Permit; and

WHEREAS, at the time that the Permit was issued (May 4, 2004), the premises was within an R2 zoning district, where such conversion was permitted; and

WHEREAS, on April 12, 2005, the City Council approved the rezoning proposal for the subject neighborhood; consequently, the subject premises is now within an R2A zoning district, where the conversion is not permitted; and

WHEREAS, because of the rezoning, the applicant subsequently filed an application for a finding that the owner had vested rights under the Permit, stating that vested rights to proceed under the Permit had been acquired based upon the amount of work performed and the amount of expenditures made; and

WHEREAS, the Board granted this application on November 1, 2005, ordered that the Permit be reinstated, and allowed six months for the completion of construction; this grant expired on May 1, 2006; and

WHEREAS, the applicant states that the delay in construction is due to the Permit not being reinstated by DOB until February 13, 2006 and because of the contractor’s scheduling conflicts; and

WHEREAS, the applicant states that it will likely take approximately one year to finish construction and obtain necessary DOB sign-offs; and

WHEREAS, in sum, the Board finds it appropriate to grant the requested extension of time, since good faith efforts to complete construction have been made since the original reinstatement.

Therefore it is Resolved that the Board and reinstates DOB Permit No. 401867618 for a period of one year from date of the expiration of the original reinstatement, to expire on May 1, 2007, subject to DOB review and approval of plans associated with the Permit.

Adopted by the Board of Standards and Appeals, May 16, 2006.

499-29-BZ, Vol. III

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner; BP Products, lessee.

MINUTES

SUBJECT – Application March 3, 2006 – Application for the Extension of Term of an Automotive Service Station with an accessory automotive repair establishment located in a C1-2/R3-2 zoning district. The term expired on March 23, 2006.

The application is seeking a 10 year extension.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, southwest corner of Marathon Parkway, Block 8276, Lot 660, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

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 July 20, 2006, at 10 A.M., for adjourned hearing.

565-57-BZ

APPLICANT – Arcadius Kaszuba, for Ann Shahikian, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 5832 Broadway (5848 Broadway or 196-198 West 239th Street) southeast corner of Broadway and 239th Street, Block 3271, Lot 198, Borough of The Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Arcadius Kaszuba and Michael Rubinstein.

ACTION OF THE BOARD – Laid over to June 20, 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 February 12, 2004 – 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: Adam Rothkrug and Michael Koufakis.

For Opposition: Henry

ACTION OF THE BOARD – Laid over to June 20, 2006, at 10 A.M., for continued hearing.

295-77-BZ

APPLICANT – Walter T. Gorman, P.E., for Alfred M. Lama, Barnik Associates, LLC, owner.

SUBJECT – Application September 27, 2005 – Extension of Term/Waiver of a variance Z.R. §72-21 for the continued use of a gasoline service station which expired on October 1, 2003 for an additional ten (10) years; and an amendment to legalize the conversion of a portion of the service building from office/sales and attendant's area to an accessory convenience store, the erection of a trash enclosure, air pump tower and car vacuum, a public telephone and wooden planter boxes. The premise is located in an C1-2 in R4 zoning district.

PREMISES AFFECTED – 87-10 Northern Boulevard, southside blockfront between 87th and 88th Streets, Block 1435, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Ronan.

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 June 6, 2006, at 10 A.M., for decision, hearing closed.

545-78-BZ

APPLICANT – Petraro & Jones, LLP, for Cotaldo Vasapolli, owner.

SUBJECT – Application January 15, 2004 – Reopening for an extension of the term of a variance for a commercial vehicle storage establishment in an R4 zoning district. The term expired on March 27, 2002. The application also seeks a waiver of the Board's rules of practice and procedure for an extension of term application filed more than one year, but less than two years, following expiration of the term. The premise is located in an R4 zoning district.

PREMISES AFFECTED – 901/903 Pine Street, West side of Pine Street, 250 feet north of the intersection of Pine Street and Cozine Avenue, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Steven Simicich.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

MINUTES

ACTION OF THE BOARD - Laid over to June 6, 2006, at 10 A.M., for decision, hearing closed.

83-00-BZ

APPLICANT – Eric Palatnik, P.C., for KFC US Properties, Inc., owner.

SUBJECT – Application September 21, 2005 – Reopening for a waiver of the Rules of Practice and Procedure and for an extension of the term of special permit which expired September 26, 2003.

PREMISES AFFECTED – 87-11/21 Northern Boulevard, northern corner of 88th Street, Block 1417, Lot 36, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik and Leo Viana.

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 July 11, 2006, at 10 A.M., for decision, hearing closed.

364-04-BZ

APPLICANT – Sheldon Lobel, for New Lots Avenue, LLC, owner.

SUBJECT – Application to consider Dismissal.

PREMISES AFFECTED – 690-702 New Lots Avenue, south side of New Lots Avenue between Jerome Street and Warwick Street, Block 4310, Lots 5, 7, 8 & 10, Borough of Brooklyn

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to June 13, 2006, at 10 A.M., for continued hearing.

SUBJECT – Application filed on August 12, 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 R2 zoning district. Current Zoning District is R2A.

PREMISES AFFECTED – 28-32 215th Street, east side of 215th Street, between 28th Avenue and 29th Avenue, Block 6016, Lot 56, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, May 16, 2006.

205-05-A

APPLICANT – Zygmunt Staszewski, P.E. for Sheila Cardinale, lessee; Breezy Point Cooperative, Inc. owner.

SUBJECT – Application August 30, 2005 – Proposed enlargement of an existing one family dwelling, not fronting on a mapped street, is contrary to GCL §36, Article 3 and is also located partially within the bed of the mapped street including the upgrade of the existing private disposal system is contrary to GCL §35.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, 52.20 West of beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michele Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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 April 11, 2006, acting on Department of Buildings Application No. 402120575, reads, in pertinent part:

“A1 – The street giving access to the existing building to be altered is not duly placed on the map of the City of New York

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 the total perimeter of the building fronting directly upon a legally

APPEALS CALENDAR

190-05-A

APPLICANT – Stadtmauer Bailkin, LLP, for John Antzoulis, owner.

MINUTES

mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

- A2 – The proposed enlargement is on a site where the building and lot are partially located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law. Proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35.”; and

WHEREAS, a public hearing was held on this application on May 16, 2006, after due notice by publication in the *City Record*, hearing closed, and then to decision on the same date; and

WHEREAS, by letter dated September 16 2005, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated October 19, 2005, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated, March 30, 2006, the Department of Transportation has reviewed he 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 11, 2006, acting on Department of Buildings Application No. 402120575, is modified by the power vested in the Board by Section 35/36 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 30, 2005”- (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, May 16, 2006.

400-05-BZY/401-05-BZY

APPLICANT – John Patrick Curran of Tannebaum Helpen et al for Philip Caccese, owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior

R3-X Zoning District. Current R3-1 Zoning District. PREMISES AFFECTED – 3202 and 3204 Morley Avenue, Block 4313, Lots 2 and 4, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

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 under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, two townhouses currently under construction at the subject premises; and

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

WHEREAS, a public hearing was held on this application on May 2, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

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

WHEREAS, the subject premises is located on the south side of Morley Avenue, southeast of Cranford and Richmond Roads; and

WHEREAS, the premises are currently located within an R3X zoning district, but were formerly located within an R3-1 zoning district; and

WHEREAS, the development complies with the former R3-1 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the sites to R3X; and

HEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

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WHEREAS, for “minor development,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse 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 such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “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, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500507418-01-NB and 500507409-01-NB (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises on the referenced date, prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board

only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed townhouses subsequent to the issuance of the New Building Permits resulted in fully-constructed buildings except for the installation of finish materials; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: photographs of both lots showing completed exteriors and partially completed interiors; building plans, stamped and sealed by the architect; an affidavit from the architect, indicating the amount of work completed; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the affidavit, signed by the architect of record, indicating the extent of completion, corroborates the applicant’s statements as to the scope and complexity of the work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits; and

WHEREAS, the applicant represents that the following work remains to be done: the installation of finish materials including sheetrock, plumbing fixtures, flooring, cabinets, lighting and appliances; and

WHEREAS, further, the applicant represents that work has not been completed as a result of a delay in the completion of the New York City Department of Design and Construction’s Dalton Avenue Sewer Project; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid is \$242,992.45 while the total project cost is \$367,572.54 (66.11 percent completion); in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits;

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

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Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permits Nos. 500507418-01-NB and 500507409-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse development for one term of two years from the date of this resolution, to expire on May 16, 2008.

Adopted by the Board of Standards and Appeals, May 16, 2006.

402-05-BZY thru 424-05-BZY

APPLICANT – Eric Palatnik, P.C., for Grymes Hill Estates, Inc., owner.

SUBJECT – Application December 28, 2005 – Proposed extension of time to renew building permits and complete construction of a development pursuant to Z.R. 11-332. Prior R3-2 zoning district. Current R3-A zoning district.

PREMISES AFFECTED – Tessa Court, Maxie Court, Block 616, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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 under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, 23 townhouses currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the townhouses, in the interest of convenience, it heard the cases together and the record is the same for all the applications; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in The City Record, and then to decision on May 16, 2006; and

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

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

WHEREAS, the subject premises are three separate groups of townhouses, all bound by Vanduzer and Broad Streets; and

WHEREAS, the premises are currently located within an R3A zoning district, but were formerly located within an R3-2

zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the “Enactment Date”), the City Council voted to adopt the rezoning of the area, which rezoned the sites to R3A; and

WHEREAS, as of that date, foundation construction had been completed, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain certificates of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 et seq., which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed, which involves the construction of two or more buildings on contiguous zoning lots, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse 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 such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “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

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WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits, and renewals, for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500416766-01-NB, 500416775-01-NB, 500416784-01-NB, 500416793-01-NB, 500416800-01-NB, 500416819-01-NB, 500416819-01-NB, 500416828-01-NB, 500416837-01-NB, 500416944-01-NB, 500416953-01-NB, 500416962-01-NB, 500416971-01-NB, 500416980-01-NB, 500416999-01-NB, 500416454-01-NB, 500416935-01-NB, 500416926-01-NB, 500416917-01-NB, 500416908-01-NB, 500416891-01-NB, 500416882-01-NB, 500416873-01-NB, 500416864-01-NB (hereinafter, the "New Building Permits"); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises on the referenced date, prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in its written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed townhouse developments subsequent to the issuance of the New Building Permits resulted in at least 50 percent of construction completed in all areas; and

WHEREAS, the applicant represents that the following work has been completed throughout the development: foundations, slabs, drywells, framing, interior stairs, windows, and roofs; and

WHEREAS, the applicant represents that the following work remains to be completed: siding, insulation, landscaping, electrical, interior plumbing, and interior finishing; and

WHEREAS, in support of this statement the applicant has submitted the following evidence: photographs of each lot showing the amount of work completed; an affidavit from the architect, indicating the amount of work completed; and copies of contracts, work orders, invoices, and cancelled checks; and

WHEREAS, the affidavit from the architect of record corroborates the applicant's statements as to the scope of

work; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the afore-mentioned work was completed subsequent to the issuance of the valid New Building Permits; and

WHEREAS, thus, taken as a whole, the applicant asserts that construction of the three groups of townhouses was at least 50 percent complete as of December 3, 2005, with 12,241.9 square feet improved and 25,708.1 square feet remaining to be improved; and

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total project cost is \$3,668,500.00; the estimated value of the construction completed is \$1,183,386.15 (32 percent); in support of this claim, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the New Building Permits;

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site the requested two-year extension for completion of construction that is allowed under ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit Nos. 500416766-01-NB, 500416775-01-NB, 500416784-01-NB, 500416793-01-NB, 500416800-01-NB, 500416819-01-NB, 500416819-01-NB, 500416828-01-NB, 500416837-01-NB, 500416944-01-NB, 500416953-01-NB, 500416962-01-NB, 500416971-01-NB, 500416980-01-NB, 500416999-01-NB, 500416454-01-NB, 500416935-01-NB, 500416926-01-NB, 500416917-01-NB, 500416908-01-NB, 500416891-01-NB, 500416882-01-NB, 500416873-01-NB, 500416864-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed townhouse developments for one term of two years from the date of this resolution, to expire on May 16, 2008.

Adopted by the Board of Standards and Appeals, May 16, 2006.

35-06-A

APPLICANT –Joseph Sherry- for William Witt, lessee
Breezy Point Cooperative Inc.

SUBJECT – Application filed March 1, 2006 – Proposed

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reconstruction and enlargement of a single family dwelling not fronting on a mapped street, contrary to GCL § 36, Article 3. Upgrade existing private disposal system in the bed of the service road contrary to Buildings Department policy. Current R4 zoning district.

PREMISES AFFECTED – 9 Doris Lane, N/S 261.92 W/O Mapped Beach 201st Street, Block 16350, Lot 400. Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

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 February 7, 2006 acting on Department of Buildings Application No. 402263135 reads, in pertinent part:

“A1 – The Site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York.

A2 – The existing private disposal system being upgraded is in the bed of a private service road contrary to Department of Buildings policy.”; and

WHEREAS, a public hearing was held on this application on May 16, 2006 after due notice by publication in the *City Record*, and then to decision on May 16, 2006; and

WHEREAS, by letter dated April 6, 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 February 7, 2006, acting on Department of Buildings Application No. 402263135 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 1, 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, May 16, 2006.

53-06-A

APPLICANT – Valentino Pompeo for Breezy Point Co-op Inc., owner, Karen Lindsay, lessee

SUBJECT – Application filed March 22, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a mapped street contrary to GCL § 36, Article 3

PREMISES AFFECTED – 104 Beach 215th Street, south of Beach 215th Street east of Breezy Point Blvd., Block 11635, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Valentino Pompeo.

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 February 7, 2006, acting on Department of Buildings Application No. 402171804 reads, in pertinent part:

“A1 – The street giving access to the existing building to be altered is not duly placed on the map of the City of New York

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 the 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 May 16, 2006 after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated February 27, 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

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Borough Commissioner, dated February 7, 2006, acting on Department of Buildings Application No. 402171804 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 22, 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, May 16, 2006.

231-04-A

APPLICANT – Joseph P. Morsellino, Esq., for Chris Babatsikos and Andrew Babatsikos, owners.

SUBJECT – Application June 17, 2004 – Proposed one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 240-79 Depew Avenue, corner of 243rd Street, Block 8103, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph Morsellino.

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 June 20, 2006, at 10 A.M., for continued hearing.

360-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 14, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a multi family 3 story residential building under the prior Zoning R5. New Zoning District is R5B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, Brooklyn, south side of 15th Street, 205' feet 5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deidre Carson and Robert Palermo, AIA.

For Opposition: John W. Buras, John Keefe for Assemblymember James F. Brennan.

For Administration: Angelina Martinez-Rubin, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Chin and Christopher Collins.....3

Negative:.....0

Absent: Vice-Chair Babbar.....1

ACTION OF THE BOARD - Laid over to June 20, 2006, at 10 A.M., for decision, hearing closed.

368-05-A

APPLICANT – Greenberg & Traurig, LLP for 400 15th Street, LLC, owner.

SUBJECT – Application December 22, 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 Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 400 15th Street, south side of 15th Street, 205'-5" west of intersection of 8th Avenue and 15th Street, Borough of Brooklyn.

COMMUNITY BOARD #7BK

For Applicant: Deidre Carson and Robert Palermo, AIA.

For Opposition: John W. Buras, John Keefe for Assemblymember James F. Brennan.

For Administration: Angelina Martinez-Rubin, Department of Buildings.

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 June 20, 2006, at 10 A.M., for decision, hearing closed.

362-05-BZY

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th LLC, owner.

SUBJECT – Application December 16, 2005 – Proposed extension of time to complete construction of a minor development pursuant to Z.R. 11-331 for a six story residential building under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, Brooklyn, east side of Sixth Avenue 128'2" north of intersection of 18th Street and Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

For Opposition: John Buras, Yi Holwin, John Keefe for Assemblymember James F. Brennan.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD - Laid over to June 20,
2006, at 10 A.M., for decision, hearing closed.

367-05-A

APPLICANT – Greenberg & Traurig, LLP for 6 on 6th
Avenue, LLC, owner.

SUBJECT – Application December 22, 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 Zoning R6. New
Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 639 Sixth Avenue, east side of
Sixth Avenue, 128'-2" north of intersection of 18th Street and
Sixth Avenue, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

For Opposition: John Buras, Yi Holwin, John Keefe for
Assemblymember James F. Brennan.

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 June 20,
2006, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, MAY 16, 2006 1:30 P.M.

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

ZONING CALENDAR

320-04-BZ

APPLICANT – Harold Weinberg, P.E., for Michael
Reznikov, owner.

SUBJECT – Application September 20, 2004 – Proposed
legalization of a Special Permit Z.R. §73-622 for a two-story
and rear enlargement, to an existing one family dwelling, Use
Group 1, located in an R3-1 zoning district, which does not

comply with the zoning requirements for floor area ratio, lot
coverage, open space and rear yard, is contrary to Z.R. §23-
141, §23-47 and §54-31.

PREMISES AFFECTED – 229 Coleridge Street, east side,
220'-0" south of Oriental Boulevard, Block 8741, Lot 72,
Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

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 September 29, 2005, acting on
Department of Buildings Application No. 301810100, reads,
in pertinent part:

1. Increases the degree of non-compliance with
respect to floor area ratio . . . contrary to Section
23-141 of the Zoning Resolution.
2. Creates a new non-compliance with respect to lot
coverage and open space . . . contrary to Section
23-141 ZR.
3. Creates a new non-compliance with respect to rear
yard and is contrary to Section 23-47 ZR.
4. Increases the degree of non-compliance of
perimeter wall height . . . contrary to Section 23-
631.”; and

WHEREAS, this is an application under ZR §§ 73-622
and 73-03 to permit, in an R3-1 zoning district, the
legalization of a purported enlargement of a single-family
dwelling, which does not comply with the zoning
requirements for Floor Area Ratio (FAR), open space, lot
coverage, perimeter wall height, and rear yard, contrary to
ZR §§ 23-141, 23-631 and 23-47; and

WHEREAS, a public hearing was held on this
application on March 7, 2006, after due notice by publication
in *The City Record*, with a continued hearing on April 4,
2006, and then to decision on May 16, 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 Vice-Chair
Babbar; and

WHEREAS, Community Board 15, Brooklyn,
recommends disapproval of this application, because it is for a
legalization; and

WHEREAS, the Manhattan Beach Community Group
also appeared in opposition to this application; and

WHEREAS, the subject lot is located on the east side of
Coleridge Street, 220 ft. south of Oriental Boulevard, in the
Manhattan Beach neighborhood of Brooklyn; and

WHEREAS, the subject lot has a total lot area of 4,160
sq. ft.; and

WHEREAS, the applicant states that the lot is now

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occupied by a two-story single-family dwelling, with an FAR of 1.02, open space of 2,440 sq. ft. (9.8% less than required), lot coverage of 1,720 sq. ft. (18.1% over the maximum), a perimeter wall height of 25 ft., and a rear yard of 23 ft.; and

WHEREAS, the Department of Buildings has ascertained, and the applicant concedes, that none of these bulk parameters comply with applicable R3-1 district regulations; and

WHEREAS, the applicant states that the home was constructed to said parameters without first obtaining a special permit from this Board; and

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

WHEREAS, however, the applicant has failed to convince the Board that the proposed legalization meets the parameters of the special permit; and

WHEREAS, specifically, the applicant did not adequately address the two following concerns, which were raised by the Board during the public hearing process: (1) whether the existing building reflects an actual enlargement of the prior building, or instead, is a new building; and (2) whether the existing perimeter wall height is allowed by the special permit; and

WHEREAS, as to the first issue, the Board notes that the text of ZR § 73-622 authorizes the Board to approve an enlargement of an existing building only; ground-up construction of a new non-complying building is not permitted; and

WHEREAS, the text repeatedly uses the word “enlargement”, which, pursuant to ZR § 12-10, is defined in part as “an addition to the floor area of an existing building”; and

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been a complete demolition of the pre-existing building; and

WHEREAS, in the case of a legalization, the Board often questions the applicant about this issue, as the construction work has already taken place and the Board is unable to ascertain, through visual observation, that there is a pre-existing unenlarged home; and

WHEREAS, in the instant matter, the applicant claims that there was not a full demolition of the building, and points to the DOB Alteration Type II permit (No. 301421469) that was obtained in October 2002 for exterior masonry veneer and interior rehabilitation; and

WHEREAS, however, the applicant concedes that this permit did not cover what ultimately was constructed; in particular, the significant intrusion into the rear yard was built contrary to this permit; and

WHEREAS, the Board notes that DOB issued a stop work order as to the construction, because it was contrary to the approved plans; and

WHEREAS, accordingly, the Board does not consider the existence of this permit, the terms of which were violated, to be evidence that there was a pre-existing building that was enlarged; and

WHEREAS, the applicant also states that no violations

were issued for illegal demolition, which must mean that no demolition occurred; and

WHEREAS, again, the Board does not consider the absence of violations to be dispositive, as the Department of Buildings does not perform daily inspections of all permitted work; thus, demolition could have occurred notwithstanding the absence of violations; and

WHEREAS, in fact, the only record of a DOB inspection is the stop work order, issued in 2004, well after the Alteration Type II permit was obtained in 2002; and

WHEREAS, the Board notes that the applicant has submitted recently taken pictures of the existing building, and pictures of a building that occupied the site in the past, taken, according to the applicant, in the 1940s; and

WHEREAS, the Board has reviewed these pictures and notes that the existing building is noticeably different than the building that occupied the site in the 1940s; and

WHEREAS, thus, the applicant has not submitted into the record any firm evidence that the existing building is an enlargement of a prior building; and

WHEREAS, however, the applicant has submitted into the record evidence which suggests that the prior building and the existing building may not be the same building; and

WHEREAS, given the record before it, the Board is unable to conclude that the existing building is an enlargement of a prior building as opposed to a new building; and

WHEREAS, ZR § 73-622 does not authorize the Board to engage in speculation as to whether a home proposed to be legalized is an enlarged home; and

WHEREAS, instead, where a legalization is proposed, the applicant must convince the Board that the current home represents an enlargement of a prior home; and

WHEREAS, here, the applicant failed to meet this burden of proof; and

WHEREAS, accordingly, the subject special permit is not available to legalize the existing building; and

WHEREAS, the second issue is the perimeter wall height of the existing home; and

WHEREAS, the perimeter wall height of a home is the height of the street wall, as opposed to the total height of the building, which is typically measured at the top of the peaked roof for single-family homes; and

WHEREAS, in an R3-1 district, the maximum perimeter wall height is 21 ft.; the maximum total building height is 35 ft.; and

WHEREAS, the applicant’s most recent zoning analysis of the existing building lists the perimeter wall height at 25 ft., four ft. in excess of the maximum; and

WHEREAS, pursuant to ZR § 73-622(3), “any enlargement resulting in a non-complying perimeter wall height shall only be permitted where . . . the enlarged building is adjacent to a single or two family detached or semi-detached residence with an existing non-complying perimeter wall facing the street. The increased height of the perimeter wall of the enlarged building shall be equal to or less than the height of the adjacent building’s non-complying perimeter wall facing the street, measured at the lowest point

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before a setback or pitched roof begins. Above such height, the setback regulations of Section 23-631(b), shall continue to apply.”; and

WHEREAS, one of the adjacent buildings has a perimeter wall height that is less than 25 ft. (specifically, the applicant admits in a submission dated April 27, 2006 that the perimeter wall height of the abutting building at 225 Coleridge Street is at 24’-3”, though in a submission dated September 23, 2005, he states that the height of the abutting building is at 24’-9”); and

WHEREAS, as noted above, DOB issued an objection to the applicant that states, in sum and substance, that the existing building as illegally built increases the degree of non-compliance of perimeter wall height contrary to Section 23-631; and

WHEREAS, the applicant initially did not contest the validity of this objection; and

WHEREAS, confronted with the fact that the perimeter wall height of 25 ft. was higher than the non-complying perimeter wall height of the neighboring home at 225 Coleridge Street (whether 24’-3” or 24’-9”), the applicant then proceeded to argue that the perimeter wall height of the existing building was in fact a pre-existing lawful non-complying condition that was merely maintained rather than increased; and

WHEREAS, the applicant contends that since the perimeter height was not increased, there is no need for the Board to legalize the perimeter wall height through the special permit; and

WHEREAS, however, the record contains the DOB approved plans for the Alteration Type II permit referenced above, which show the height of the perimeter wall existing prior to the commencement of construction as 21’-0”; and

WHEREAS, accordingly, the Board asked the applicant to explain how the 25 ft. perimeter wall could be a pre-existing lawful non-complying condition when the architect that signed and sealed the Alteration Type II plans indicated that the perimeter wall height existed at 21 ft.; and

WHEREAS, the applicant responded that the architect was in error, and that based upon his personal knowledge of the building when it was converted into a two-family dwelling in 1976 under DOB Alteration No. 689/76, the perimeter wall height was at 25 ft.; the applicant notes that he personally prepared the 1976 alteration application; and

WHEREAS, the applicant submitted the application forms for the 1976 alteration; these plans list the height of the building at that time at 25 ft.; and

WHEREAS, the Board notes that the 1976 alteration form does not specify that the 25 ft. height is a perimeter wall height as opposed to a total building height; and

WHEREAS, nonetheless, the applicant claims this listing is actually the perimeter wall height, and not the total building height; and

WHEREAS, the Board finds this explanation unconvincing: the Vice-Chair of the Board, both a registered architect and a former DOB Commissioner with broad knowledge of DOB practice and procedure, noted at hearing that the listing for building height on the form represented

total height, not perimeter wall height; and

WHEREAS, the Board asked the applicant to support his contention through the submission of an elevation or section related to the 1976 alteration that would show the perimeter wall height; and

WHEREAS, the applicant refused, stating that he only submitted a floor plan to DOB in 1976, and the floor plan did not show the perimeter wall height; and

WHEREAS, in the April 27, 2006 submission, the applicant cites to the 1940s-era photos, and states that based on his approximations of the height of the step risers, the floors, and the attic level as shown in the photos, the actual perimeter wall height might have been at least 23’-4”; and

WHEREAS, even if the Board accepted the applicant’s completely unsupported measurements, which are based on an entirely unacceptable methodology, by the applicant’s own admission, the perimeter wall height of the existing building, at 25 ft., is still approximately 1’-8” higher than the alleged pre-existing non-complying wall height, and therefore can not represent a continuation of a non-complying condition; and

WHEREAS, instead, it is still an increase in the non-complying condition; and

WHEREAS, for the reasons set forth above, the Board concludes that the existing building’s perimeter wall height represents an increase in the degree of non-compliance; and

WHEREAS, because the 25 ft. high perimeter wall exceeds the perimeter wall height of the neighboring building, this non-compliance cannot be remedied through the special permit; and

WHEREAS, accordingly, even assuming that the applicant had submitted sufficient evidence that the existing home is actually an enlargement of a prior home, the special permit would still not be available; and

WHEREAS, in conclusion, the Board finds that it is without authority to grant the requested special permit pursuant to ZR § 73-622; and

WHEREAS, as a final observation, the Board notes that this case was considerably compromised by the fact that the building owner did not first seek the special permit prior to commencing construction, as the significant evidentiary problems present in the case arose primarily from this failure.

Therefore it is Resolved that the determination of the Brooklyn Borough Commissioner, dated September 29, 2005, acting on Department of Buildings Application No. 301810100, is hereby upheld and that this application for a special permit pursuant to ZR § 73-622 is hereby denied.

Adopted by the Board of Standards and Appeals, May 16, 2006.

396-04-BZ CEQR #04-BSA-076M

APPLICANT – Stroock & Stroock & Lavan, LLP, by Ross Moskowitz, Esq., for S. Squared, LLC, owner.

SUBJECT – Application December 21, 2004 – Under Z.R. §72-21 to permit the Proposed construction of a thirteen story, mixed use building, located in a C6-2A, TMU zoning

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district, which does not comply with the zoning requirements for floor area, lot coverage, street walls, building height and tree planting, is contrary to Z.R. §111-104, §23-145, §35-24(c)(d) and §28-12.

PREMISES AFFECTED – 180 West Broadway, northwest corner, between Leonard and Worth Streets, Block 179, Lots 28 and 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ross Moskowitz.

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 Manhattan Borough Commissioner, dated December 9, 2004, acting on Department of Buildings Application No. 103938045, reads, in pertinent part:

“Proposed lot coverage of residential portion of the building exceeds allowable lot coverage, contrary to ZR 23-145”; and

WHEREAS, this is an application under Z.R. §72-21, to permit, on a site in a C6-2 zoning district within the Special Tribeca Mixed Use district - Area A-1 (“TMU”), a proposed eight story mixed-use residential/retail building, which does not comply with lot coverage, contrary to Z.R. §23-145; and

WHEREAS, the applicant proposes to construct an eight story plus penthouse residential/retail building, with ground floor retail and 16 residential units on the upper floors; and

WHEREAS, the proposed building will be constructed pursuant to the Quality Housing regulations set forth at Chapter 8, Article II of the ZR, and will have a complying Floor Area Ratio (FAR) of 5.0, a complying street wall height of 84’-7”, and a complying total height of 96’-7” (not including mechanicals) ; and

WHEREAS, the proposed lot coverage, however, is 100 percent, which exceeds the maximum lot coverage of 80 percent permitted by Z.R. §23-145 for a corner lot and the maximum of 70 percent for an interior lot; and

WHEREAS, the applicant initially proposed to construct a 13 story building with 39 residential units, a non-complying FAR of 7.11, a non-complying street wall height of 91’-3”, and a non-complying total height of 159’-11” (including mechanicals); the proposed building also did not comply with the Quality Housing street tree planting regulations; and

WHEREAS, the Board expressed concern about this proposal, noting that there did not appear to be any justification for an FAR waiver, and also that the proposed building was too large for the character of the community and did not represent the minimum variance; and

WHEREAS, the applicant submitted two intermediate proposals, both of which were also determined by the Board to reflect more than the minimum variance; and

WHEREAS, specifically, the second proposal was a twelve story building with 34 units, a non-complying FAR of 6.79, a non-complying street wall height of 101’-11”, and a non-complying total height of 149’-11” (including mechanicals); and

WHEREAS, the third proposal was an eleven story building with 30 units, a non-complying FAR of 6.28, a non-complying street wall height of 91’-3”, and a total height of 124’-7”; and

WHEREAS, neither of these intermediate proposals complied with the street tree planting requirement; and

WHEREAS, the applicant responded to the Board’s concerns about these two proposals by submitting the current version, as described above, which the Board finds acceptable in terms of impact and minimum variance; and

WHEREAS, the Board also observes that the applicant obtained a reconsideration from the Department of Buildings that eliminated the need for a street tree planting waiver; and

WHEREAS, a public hearing was held on this application on October 18, 2005 after due notice by publication in the *City Record*, with continued hearings on November 29, 2005, February 7, 2006, and March 7, 2006, and then to decision on April 25, 2006, on which date the decision was deferred to May 16, 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, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board No. 1, Manhattan, recommends disapproval of the original version of this application, contending that the site does not suffer from a hardship; in particular, the Community Board alleged that the recent initiation of nearby complying development belies the claim of hardship; and

WHEREAS, certain neighbors to the premises also appeared in opposition to this application, alleging that the developer should have known about the alleged hardships in advance of purchasing the site; and

WHEREAS, the subject premises is situated at the southwest corner of West Broadway, between Leonard and Worth Streets, and consists of two contiguous tax lots (Lots 28 and 32), which have historically constituted one zoning lot; and

WHEREAS, the total lot area over the entire site is 16,179 sq. ft.; and

WHEREAS, the site is within a C6-2A zoning district, which is an R8A equivalent for residential use within the TMU district; and

WHEREAS, Lot 28 is improved upon with an existing public parking garage, containing 37,952 sq. ft. of floor area, which will be retained; and

WHEREAS, Lot 32 (the actual development site) is improved upon with an existing three-story commercial building, containing 10,651 sq. ft. of floor area, which is proposed to be demolished; and

WHEREAS, no accessory parking spaces are required or will be provided; and

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WHEREAS, initially, the applicant stated that the following were unique physical conditions which, when considered in combination, create an unnecessary hardship in developing the site in compliance with the applicable regulations: (1) the site suffers from pre-existing poor soil conditions; (2) the soil is contaminated; (3) the site suffers from a high water table; (4) a subway tunnel is in close proximity to the site; and (5) the actual development site (Lot 32) is a shallow lot;; and

WHEREAS, as to the soil conditions, the applicant states that the soil consists of uncontrolled fill material underlain by soft peat, loose sandy clay, silty sand, and then bedrock at a depth of approximately 100 ft.; and

WHEREAS, the applicant states that a deep pile foundation system is required; and

WHEREAS, the applicant supported this statement with a letter prepared by its engineering consultant, which states that 76 foundation piles are required; and

WHEREAS, as to contamination, the applicant states that the premises contained an active automobile service station from approximately 1950 to 1985; and

WHEREAS, the applicant demonstrated that there were six 550 gallon gasoline storage tanks related to the service station use that resulted in soil contamination; and

WHEREAS, the applicant submitted a report from its environmental consultant detailing the degree of contamination and the costs associated with its remediation; and

WHEREAS, as to high water table, the applicant states that existing groundwater is measured at nine ft. below the surface; and

WHEREAS, the applicant states that the cellar floor and the grade walls must be designed to resist the hydrostatic uplift pressures from the water table, resulting in the need for a pressure mat; and

WHEREAS, finally, as to the subway tunnel, the applicant states that the No. 1 subway line runs below the site, and that the offset distance between the subway structure and the property line ranges from 2 ft. at the northeast corner of the site to 13 ft. at the southwest corner; and

WHEREAS, the applicant notes that due to the subway structure, piling for excavations needs to be installed with expensive cast-in-place drilled fractioned non-displacement piles in order to minimize settlement issues within the subway structure; this statement was supported by expert testimony from the project engineer; and

WHEREAS, at hearing, the Board requested that the applicant establish that such features were unique to the site, based upon a study of an expanded area surrounding the site; and

WHEREAS, the applicant responded by providing a study that compared the subject site to other properties within a 400 ft. radius; and

WHEREAS, this study showed that the subject site is the only site within this radius that is within both the limits of the former inland marsh area and the 50 ft. subway "influence zone" (where construction is constrained by New York City Transit

Authority regulations), and that also has significant unremediated environmental contamination; and

WHEREAS, the study included diagrams showing how these various factors differentially affected the subject site versus other properties; and

WHEREAS, based upon the above, the Board agrees that the specific combination of unique physical features, and the degree to which they impact complying development, is particular to the site; and

WHEREAS, the Board further agrees that the combination of features leads to premium construction costs; and

WHEREAS, as to the depth of Lot 32, the Board noted at the first hearing that while Lot 32 is shallow (having a depth of approximately 50 ft.), the zoning lot as a whole is not (the depth of the zoning lot is approximately 150 ft.); and

WHEREAS, the Board suggested to the applicant that it apply its analysis of unique hardship to the entire site and not a portion thereof; and

WHEREAS, the applicant agreed, and revised its uniqueness analysis to consider both the shallowness of the development portion of the zoning lot (Lot 32) and the retention of the existing garage on Lot 34; and

WHEREAS, the Board observes that the existing garage is a functioning, non-obsolete, lawfully non-conforming, revenue producing building that does not need to be demolished; and

WHEREAS, additionally, the applicant states that a scenario that includes the demolition of the garage would increase construction costs significantly, because of actual demolition costs and incremental costs related to environmental remediation on the garage site; and

WHEREAS, additionally, revenue from the garage would be lost during redevelopment; and

WHEREAS, the Board concludes that the retention of the garage is a rational development decision and is not a self-created hardship; and

WHEREAS, however, the garage does result in a further constraint on complying development, in that the remaining developable portion of the site is shallow; and

WHEREAS, the Board observes that without the requested lot coverage waiver, the resulting development on such a shallow site would be a taller, less efficient building, with a compromised floor plate that would not provide reasonable layouts for the residential units; and

WHEREAS, the lot coverage waiver allows for a far more efficient floor plate, which will increase revenue sufficiently to overcome the identified premium construction costs; and

WHEREAS, in sum, the Board finds that the need for a lot coverage waiver arises from the combination of premium costs and the constraints that retention of the existing garage places on the developable portion of the site; and

WHEREAS, accordingly, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's soil, water table, contamination, and proximity to the subway - when considered in the aggregate and in conjunction with the existing built conditions on the zoning lot, create unnecessary hardship and practical difficulty in developing the

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site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing: (1) a complying mixed-use building; (2) an office building; and (3) a hotel; and

WHEREAS, as noted above, the Board asked for a revised study based upon the entire zoning lot, since the failure to include the garage valuation in the overall site valuation skewed the outcome of the feasibility study; and

WHEREAS, in response, the applicant modified the feasibility study and analyzed a complying mixed-use building that took into account the correct site valuation for the entire zoning lot; and

WHEREAS, the applicant concluded on the basis of this revised study that this scenario would not realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, 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, the applicant states that the proposed building would contribute to an established pattern of commercial and residential land uses in the neighborhood, and would replace an existing three-story building with a building designed to better enliven the street presence fronting the site; and

WHEREAS, the applicant notes that the surrounding area includes numerous mixed-use residential/retail buildings, with ground floor retail; and

WHEREAS, the Board observes that the proposed uses are as of right; and

WHEREAS, the Board also observes that after reducing the size of the building and eliminating the FAR, total height, street wall height and street tree waiver requests, the building is fully compliant with zoning aside from the increase in lot coverage; and

WHEREAS, the Board finds that full lot coverage will not negatively affect the character of the community, nor will it impact the adjacent neighbors, particularly since the adjacent building is a parking garage on the same zoning lot as the proposed building; and

WHEREAS, even though the bulk of the building complies aside from lot coverage, the Board notes that the applicant submitted a survey showing the heights and FARs of buildings in the neighborhood, for both commercial and residential uses; and

WHEREAS, the Board observes that the proposed building is compatible in terms of height and FAR with many other residentially occupied buildings in the area, many of which are built to FARs of 6 or 7; and

WHEREAS, finally, the applicant notes that the retention

of the garage will negate any potential parking impacts, even though there is no accessory parking requirement for the proposed building; and

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

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

WHEREAS, in addition, as stated above, the Board does not regard the retention of the garage to be a self-created hardship; and

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

WHEREAS, the applicant further elaborated that the mixed use residential/retail building scenario was analyzed both with and without the impact of the existing garage and related operational costs, and in each case, the return was minimal; and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §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. 05BSA076M, dated September 23, 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.

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

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Assessment Statement Form, dated December 2004; (2) an August 2004 Phase I Environmental Site Assessment Report and a Phase II Subsurface Investigation Report; and (3) April 2005 Draft Remedial Action Plan; 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 May 8, 2006 and submitted for proof of recording on May 9, 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 Z.R. §72-21 and grants a variance to permit, on a site in a C6-2(TMU) zoning district, a proposed eight story mixed-use residential/retail building, which does not comply with lot coverage, which is contrary to Z.R. §23-145, *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 February 21, 2006"- (8) sheets; "Received March 21, 2006"-(8) sheets, and "Received March 22, 2006"-(1) sheet and *on further condition*: THAT the following are the bulk parameters of the building: eight stories plus a penthouse, 16 residential units, FAR of 5.0, a street wall height of 84'7", a total height of 96'-7, and a non-complying lot coverage of 100 percent;

THAT all rooftop mechanicals shall comply with applicable Building Code requirements, as reviewed and approved by the Department of Buildings;

THAT all Quality Housing regulations shall be complied with, as reviewed and approved by the Department of Buildings;

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 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, May 16, 2006.

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 – 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 Brooklyn Borough Commissioner, dated December 2, 2004, acting on Department of Buildings Application No. 301065264, reads, in pertinent part:

“Proposed floor area is contrary to ZR 23-141;

Proposed open space ratio is contrary to ZR 23-141.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR) and Open Space Ratio (OSR), contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on April 11, 2006, after due notice by publication in *The City Record*, with a continued hearing on May 9, 2006, and then to decision on May 16, 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 Avenue M at the northeast corner of Avenue M and East 21st Street; and

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WHEREAS, the subject lot has a total lot area of 4,000 sq. ft., and, prior to the illegal enlargement, was occupied by a 1,994 sq. ft. (0.50 FAR) single family dwelling; and

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

WHEREAS, however, the applicant enlarged the previously existing home without first obtaining the special permit; and

WHEREAS, instead, the applicant represents that an alteration permit for an as of right enlargement was obtained from the Department of Buildings, and said permit allowed for the first floor to be exempt from floor area as it was occupied by a garage and recreation space; and

WHEREAS, however, the building, once enlarged, was occupied contrary to plans on the first floor, in that it was used for living spaces such as a family room and kitchen; in fact, the garage was used for a den; and

WHEREAS, further, the owner enclosed the second and third floor terraces by enclosing them with greenhouses; and

WHEREAS, these impermissible changes created significant non-compliances as to FAR and open space; and

WHEREAS, the owner was compelled to file for the subject legalization after the non-compliances were discovered; and

WHEREAS, upon initial filing, the applicant proposed to legalize the as-built enlargement without any modifications; and

WHEREAS, the floor area of the building as illegally enlarged is 4,927 sq. ft. (1.23 FAR); and

WHEREAS, the Board found that the building as enlarged was not compatible with the character of the neighborhood and was not in the spirit of the special permit, since it resulted in an oversized home relative to its neighbors and represented an extreme FAR increase over what is permitted as of right and what is usually granted by the Board through the special permit; and

WHEREAS, the Board notes that it typically grants 1.0 FAR in 0.5 FAR zoning districts; and

WHEREAS, the Board asked the applicant to eliminate excess floor area; in particular, the Board suggested that two greenhouses be removed, since they counted as zoning floor area; and

WHEREAS, at the Board's suggestion, the applicant removed the enclosed greenhouses on the second and third floors and revised the plans to reflect their removal; the applicant also provided photographs showing that the greenhouses have been removed; and

WHEREAS, however, the Board suggested a further reduction in floor area, since the elimination of the greenhouses reduced the FAR to a level still in excess of what the Board normally grants; and

WHEREAS, accordingly, the Board requested that the applicant eliminate additional excess floor area by removing the first floor family room and replacing it with a viable garage, since a garage would not count as floor area; and

WHEREAS, the applicant subsequently submitted plans showing that the family room will be replaced with a one-car

garage; and

WHEREAS, these modifications result in a dwelling with 4,067 sq. ft. (1.02 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the existing OSR of 112 percent is unaltered by the modifications; the minimum required OSR is 150 percent; and

WHEREAS, the complying front yard of 15 feet, 4 inches (15 feet is required) and two complying side yards, one of 14 feet and one of 6.5 feet (side yards of 8 feet and 5 feet are required), have been maintained; no rear yard is required for this corner lot; and

WHEREAS, both the complying wall height of 19.5 feet and the non-complying total height of 29 feet, 1.5 inches have been maintained; and

WHEREAS, the Board finds that, subsequent to the significant floor area reductions, the enlargement neither alters the essential character of the surrounding neighborhood, nor impairs the future use and development of the surrounding area; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the 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 legalization of an enlargement, with modifications, to a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio and Open Space Ratio, 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 "Received April 11, 2006"-(8) sheets and "Received May 9, 2006"-(1) sheet; and *on further condition*:

THAT a garage accommodating one car shall be maintained as reflected on the BSA-approved plans;

THAT the garage shall not be used for living purposes;

THAT the terraces may not be enclosed;

THAT the driveway in the northern side yard shall be kept free of encroachments or obstructions;

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

THAT the total FAR on the premises shall not exceed 1.02;

THAT a certificate of occupancy be obtained within one year from the date of this grant;

THAT no certificate of occupancy shall be issued unless a DOB inspection prior to issuance confirms that the greenhouses remained removed and the garage is actually

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being used as a garage;

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

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;

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, May 16, 2006.

5-05-BZ

CEQR #05-BSA-081Q

APPLICANT – Sheldon Lobel, P.C., for S & J Real Estate, LLC, owner.

SUBJECT – Application January 14, 2005 – Under Z.R. §73-53 – to permit the enlargement of an existing non-conforming manufacturing building located within a district designated for residential use (R3-2). The application seeks to enlarge the subject contractor's establishment (Use Group 16) by 2,499.2 square feet.

PREMISES AFFECTED – 59-25 Fresh Meadow Lane, east side, between Horace Harding Expressway and 59th Avenue, Block 6887, Lot 24, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Irving Minkin.

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 9, 2005, acting on Department of Buildings Application No. 402067712, reads:

“Enlargement of the lawful existing non-conforming contractor's establishment is not permitted as of right per ZR 52-40.”; and

WHEREAS, this is an application made pursuant to Z.R. §§ 73-53 and 73-03, to allow, within an R3-2 zoning district, the proposed extension of a Use Group (“UG”) 16D Contractor's Establishment Storage and Offices, contrary to Z.R. §52-40; and

WHEREAS, a public hearing was held on this application on June 14, 2005 after due notice by publication in *The City Record*, with continued hearings and/or adjournments on July 26, 2006, September 20, 2005, November 29, 2005, January 10, 2006, March 7, 2006 and April 4, 2006, and then to decision on May 16, 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 Vice-Chair Babbar; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, because of concerns about traffic and impact on quality of life for the neighbors; and

WHEREAS, adjacent neighbors to the subject site appeared in opposition to the application, stating: (1) that the site no longer enjoyed non-conforming use status because the UG 16 use currently occupying the site is a different use than the UG 17 Soda Water Bottling and Soda Water Storage use authorized by the most recently issued certificate of occupancy (“CO”), and no CO for the UG 16 use was obtained, as required by the Building Code; and (2) that because no CO was obtained, the UG 16 use is not “lawfully located”, as required by Z.R. §73-53(a)(3); and

WHEREAS, the Board observes that these two threshold issues merit initial discussion; and

WHEREAS, as to the first issue, the opposition notes that Z.R. §52-61 provides, in sum and substance, that the lawful non-conforming status of a use is discontinued if the use lapses for a period of two years or more; and

WHEREAS, the opposition states that the failure to obtain a new CO in 1969, which is when the change in use from UG 17 to UG 16 occurred, constitutes a lapse of the non-conforming use; and

WHEREAS, however, the record contains a statement from the Department of Buildings dated October 27, 2005, which states that it does not consider the non-conforming use status of the site to have been discontinued; and

WHEREAS, DOB cites to an appellate court decision, *City of New York v. Victory Van Lines*, 69 A.D.2d 605 (2d Dep't 1979), which holds that the CO requirement, at least in the context of an analysis of whether non-conforming use status has lapsed, is merely a technical formality, and so long as the new use is permitted under the change of non-conforming use provisions in Article V of the Zoning Resolution, the non-conforming status of the site is maintained; and

WHEREAS, the Board agrees that this is the correct reading of the *Victory Van Lines* case, and concurs that the existing UG 16 use is permissibly occupying the site as non-conforming use; and

WHEREAS, as to the second issue, the opposition notes that one of the other prerequisites for the subject special permit is set forth at Z.R. §73-53(a)(3), which reads: “the use for which such special permit is being sought has been lawfully located on the zoning lot on which the expansion is to occur, or a portion thereof, for five years or more”; and

WHEREAS, the record reveals that the UG 16 storage use has existed on the site for over five years, having been first established in 1969, when the building was used for the storage of furniture; and

WHEREAS, however, the opposition states that the currently valid CO for the site is from 1956, and, as noted above, establishes the legal use of the premises as UG 17 soda water bottling and soda water storage; and

WHEREAS, while UG 16 storage was established on

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the site sometime in 1969, the property owner failed to obtain a new CO, as required for the change in UG; and

WHEREAS, in a submission dated April 28, 2006, DOB states that the current occupancy is inconsistent with the last CO and is therefore illegal as per Section 27-217 of the Building Code, which provides, in pertinent part: “No change shall be made in the occupancy or use of an existing building which is inconsistent with the last issued certificate of occupancy for such building . . . unless a new certificate of occupancy is issued by the commissioner certifying that such building or part thereof conform to all of the applicable provisions of this code and all other applicable laws and regulations for the proposed new occupancy or use.”; and

WHEREAS, DOB asserts that a new CO was required in 1969 because of the change from UG 17 to UG 16; and

WHEREAS, the opposition argues, in sum and substance, that the phrase “lawfully located” as used in Z.R. § 73-53(a)(2) means that the use must be legal in all respects, and if a CO has not been obtained as required, then the use is not “lawfully located” notwithstanding the permissibility of the existing use under the Z.R.; and

WHEREAS, the Board agrees with DOB that a CO should be obtained and, in fact, as a condition of the grant made herein, requires that one be obtained for the subject use prior to issuance of any permit for the proposed enlargement; and

WHEREAS, however, the Board does not construe the phrase “lawfully located” in the same way as the opposition; and

WHEREAS, the Board finds that reading a requirement into this phrase that obtainment of a CO is absolutely necessary even where DOB has opined that for zoning purposes, the use is permissible as its non-conforming status has not lapsed, is contrary both to the principles underlying the holding of Victory Van Lines and to the purpose of the special permit; and

WHEREAS, the Victory Van Lines case established that for zoning purposes, the failure to obtain a CO is not tantamount to a discontinuance of a non-conforming use pursuant to Z.R. §53-32; and

WHEREAS, Z.R. §53-32 is a zoning provision, just as Z.R. §73-53 is a zoning provision; and

WHEREAS, it is reasonable, therefore, for the Board to conclude that a CO requirement for purposes of being lawfully located pursuant to Z.R. §73-53 would impose the same kind of unreasonably technical obstacle to use or development of one’s property as identified by the court in Victory Van Lines; and

WHEREAS, furthermore, the purpose of the special permit is to allow certain manufacturing uses that occupied floor area within a building as of 1987 the opportunity to enlarge without seeking a variance pursuant to Z.R. §72-21; and

WHEREAS, the Board notes that the UG 16 use has occupied floor area within the building since 1969, and therefore, whether a CO had been obtained or not, the enlargement of this use is consonant with the purpose of the special permit; and

WHEREAS, in sum, the Board construes the phrase “lawfully located” to mean permissible by zoning; and

WHEREAS, the Board observes that acceptance of the opposition’s argument would require the Board to conduct a full examination of the existing use and the site for not only zoning compliance, but also for compliance with Building Code, State Labor Law, and other legal requirements, perhaps even laws and regulations that do not relate to land use or building form; and

WHEREAS, the Board notes that this would be contrary to its usual practice: on all variance and special permit applications, the Board only reviews the particular zoning provision objected to by DOB; if a waiver or modification of that provision is granted, the resolution for the grant explicitly states that compliance with other applicable zoning provisions and other laws will be as reviewed and approved by DOB; and

WHEREAS, the Board notes that this interpretation is limited to the phrase “lawfully located” as used in Z.R. §73-53(a)(3), and should not be construed in any way as a limitation on DOB’s ability to enforce against a premises that does not have a proper CO, or as a limitation on DOB’s enforcement capabilities in general; and

WHEREAS, in conclusion, the Board finds neither of the arguments presented by the opposition to be persuasive; and

WHEREAS, the record indicates that the subject zoning lot is located on the east side of Fresh Meadow Lane, between Horace Harding Expressway and 59th Avenue, and is within an R3-2 zoning district; and

WHEREAS, the lot is 6,000 square feet and is improved upon with a 3,200-square-foot one-story building; and

WHEREAS, the applicant asserts that the 1952 building has been continuously occupied for storage use from the time it was built; and

WHEREAS, as noted above, the most recent CO was issued in 1956, and authorizes UG 17 Soda Water Bottling and Soda Water Storage; and

WHEREAS, the applicant states that from 1956 to 1969, the soda water and bottling company occupied the building; and

WHEREAS, subsequent to that, from 1969 until 2003, the prior business owner used the site and building for storage of furniture, a UG 16 storage use; and

WHEREAS, the current owner, who took possession of the site in 2003, also proposes to use the building primarily for storage, with two accessory offices; and

WHEREAS, the applicant proposes to enlarge the existing building by 2,499.2 square feet, in order to add storage and office space on the first and second floors; and

WHEREAS, as to the prerequisites, the applicant, through testimony and submission of supporting documentation, has demonstrated that: the premises is not subject to termination pursuant to Z.R. §52-70; the use for which the special permit is being sought has lawfully existed for more than five years; there has not been residential use on the site during the past five years; the subject building has not

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received an enlargement pursuant to Z.R. §§11-412, 43-121 or 72-21; and that the subject use is listed in Use Group 16D, not Use Group 18; and

WHEREAS, in support of this demonstration, the applicant has submitted utility bills, a letter from the prior owner, and a history of the listing for storage in the Cole's Directory, starting with 1972; and

WHEREAS, the requested proposal is for an extension that results in less than 45% of the floor area occupied by the UG 16 use on December 17, 1987 and is less than a 2,500 square feet addition to the floor area occupied by such use on December 17, 1987, and does not exceed 10,000 square feet; and

WHEREAS, the applicant represents that the extension will be located in an entirely enclosed building, and that there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that that the requirements set forth at Z.R. §73-53(b)(4),(5),(6),(7),(8), and (9) are either satisfied, or are inapplicable to the instant application; and

WHEREAS, at hearing, the Board expressed concern about potential parking impacts, the hours of operation of the storage facility, off-site accessory parking, the illegal presence of a towing company, and trailers that are present on the site; and

WHEREAS, as to potential parking impacts, the applicant states the number of employees at the premises will be a maximum of five or six at any one time, and their vehicles will be parked exclusively on the premises; and

WHEREAS, the applicant also states that there will be a total of approximately 20 deliveries to and from the site during the week, and that the delivery vehicle will be located entirely within the building during loading and unloading; and

WHEREAS, the applicant states that the following will be the hours of operation: 8 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 1 p.m. on Saturday; the Board finds these hours acceptable; and

WHEREAS, the applicant states that the off-site accessory parking has been terminated; and

WHEREAS, the applicant also states that legal proceedings have begun against the towing company in order to evict it; and

WHEREAS, the applicant also states that all trailers will be removed from the site; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject extension will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking for the vehicles generated by the enlargement, and that loading will be inside the building; and

WHEREAS, the Board notes that there are no required side yards; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the Board notes that along Fresh Meadow Lane, there are numerous non-residential uses, located on Lots, 6, 14, 18, 20, 22, 24, 28, 30, 38, 35, and 40; and

WHEREAS, the Board observes that a cemetery is located across the street from the site, and that two-story commercial buildings abut the site to the rear; and

WHEREAS, accordingly, in spite of its zoning classification, the neighborhood in which the site is located is characterized by a significant manufacturing and commercial presence; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, although allegations were made about traffic impacts arising from the proposed enlargement, no evidence of such has been submitted to the Board; and

WHEREAS, further, the Board notes that the grant of the special permit is conditioned such that certain potential adverse effects are mitigated; and

WHEREAS, finally, the Board notes that the grant of the special permit will facilitate the enlargement of a viable UG 16 use, which provides jobs and tax revenue, on a site where such use is appropriate; and

WHEREAS, based upon the above, 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 are outweighed by the advantages to be derived by the community; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under Z.R. §§73-53 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§73-53 and 73-03 for a special permit to allow, within an R3-2 zoning district, the proposed extension of Use Group 16D Contractor's Establishment Warehouse and Wholesale use, contrary to Z.R. §52-40, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received July 12, 2005"-(1) sheet and "Received April 4, 2005" -(5) sheets; and *on further condition*;

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 there shall be no open uses on the site;

THAT the hours of operation are: 8 a.m. to 5 p.m. Monday through Friday and 8 a.m. to 1 p.m. on Saturday;

THAT the offices shall be accessory to the storage facility only;

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

THAT all applicable fire safety measure will be complied with;

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THAT within six months from the date of this grant, the owner of the premises shall have obtained a certificate of occupancy for the existing use;

THAT no building permit for the proposed enlargement shall be issued by the Department of Buildings unless and until a certificate of occupancy has been obtained within this six month period;

THAT prior to the issuance of any building permit for the enlargement of the facility, all trailers currently on the site shall be removed;

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

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

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

Adopted by the Board of Standards and Appeals May 16, 2006.

74-05-BZ

CEQR #05-BSA-110R

APPLICANT – Snyder & Snyder, LLP, for The Island Swim Club, Inc., Omnipoint Communications, Inc., lessee.

SUBJECT – Application March 29, 2005 – Under Z.R. §§73-30 and 22-21 – to permit the proposed construction of a non-accessory radio tower for public utility wireless communications (disguised as a 50-foot tall flagpole), located in an R3-2 zoning district.

PREMISES AFFECTED – 1089 Rockland Avenue, northeast side, between Borman and Shirra Avenues, Block 2000, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert B.

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 Borough Commissioner, dated March 21, 2005, acting on Department of Buildings Application No. 500668949, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to NYC Department of Buildings Technical Policy and Procedure Notice 5/98 and therefore not allowable within R3-2 district . . . review pursuant to Section 73-30 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under Z.R. §§73-30 and 73-03, to permit the proposed construction of a non-accessory radio tower for public utility wireless

communications, within an R3-2 zoning district, which is contrary to Z.R. §22-00; and

WHEREAS, initially, in March 2005, the applicant submitted applications for two cell towers; and

WHEREAS, this first proposal was for a 50-foot monopole at the subject location that received support from the Community Board, and a second 50-foot monopole at 2018 Richmond Avenue which was not supported by the Community Board; and

WHEREAS, in response to community concerns, the applicant reviewed both applications and withdrew the Richmond Avenue plan, while revising the proposal for Rockland Avenue; and

WHEREAS, in order to compensate for the service that would have been covered by the second pole, and to satisfy the applicant’s service area needs, the remaining 50-foot pole was enlarged to 80 feet; and

WHEREAS a public hearing was held on this application on January 10, 2006, after due notice by publication in *The City Record*, to continued hearing on April 11, 2006, and then to decision on May 16, 2006; and

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

WHEREAS, Community Board 2, Staten Island, recommends disapproval of the subject application; and

WHEREAS, the president of the Mid-Island Political Association Committee (MIPAC) appeared in opposition to this application, citing concerns about the existence of other cell tower sites in the community, particularly those near schools; and

WHEREAS, the Board noted that the number of cell tower locations cited has been confused with the number of antennas and that because there are typically six to twelve antennas per site, the number of sites is actually much lower than what the opposition presented; and

WHEREAS, further, the Board noted that the applicant provided evidence that the proposed facility will comply with all applicable regulations pertaining to radio frequency emissions; and

WHEREAS, the subject premises is used as a private swim club, known as Island Swim Club, and has a lot size of approximately 324,309 sq. ft.; and

WHEREAS, initially, the applicant proposed to locate the cell tower towards the perimeter of the proposed site; and

WHEREAS, at hearing, the Board expressed concern about the location within the chosen site and asked the applicant to investigate other locations that would minimize the visual impact of the pole; and

WHEREAS, the applicant revised the plans and now proposes to locate the monopole in an area towards the center of the property; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of an 80-foot tall monopole, designed to resemble a flagpole, that will hide all six antennas and related cables; and

WHEREAS, pursuant to Z.R. §73-30, the Board may

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grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within a gated and locked fence enclosure, and notes further that the general public is not allowed on the club’s grounds; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone, or other uses; and

WHEREAS, at hearing, the Board asked the applicant if there were other potential sites for the cell tower such as the Springville Little League ballfield; and

WHEREAS, the applicant submitted evidence of communication with the Springville Little League showing that the organization is not presently able to lease space on its property; and

WHEREAS, in response to the Board’s suggestion, the proposed facility will be constructed to support the antennas of another wireless carrier in order to promote collocation and discourage the proliferation of additional sites; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at Z.R. §73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at Z.R. §73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA110R, dated

March 29, 2005; and

WHEREAS, the EAS documents show 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.

Therefore it is Resolved that the Board of Standards and Appeals issues an Unlisted Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under Z.R. §§73-03 and 73-30, to permit the proposed construction of a non-accessory radio tower for public utility wireless communications, within an R3-2 zoning district, which is contrary to Z.R. §22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received March 27, 2006”–seven (7) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2006.

320-05-BZ

CEQR #06-BSA-027M

APPLICANT – Rothkrug Rothkrug Weinberg, for John Catsimatidis, owner; 113 4th Sports Club, LLC, lessee.

SUBJECT – Application November 2, 2005 – Special Permit Under Z.R. §73-36, to allow the proposed operation of a physical cultural establishment located on portions of the cellar and first floor of an existing eight story mixed use structure. PCE use is 25, 475 sq ft of floor area. The site is located in a C6-1 Zoning District.

PREMISES AFFECTED – 113/9 Fourth Avenue, a/k/a

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101/117 East 12th Street, N/E/C of Fourth Avenue and East 12th Street, Block 558, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Adam Rothkrug.

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 Manhattan Borough Commissioner, dated January 11, 2006, acting on Department of Buildings Application No. 104063656, reads, in pertinent part:

“Contrary to section 32-31 a Physical Culture Establishment is not permitted in a C6-1 zone.”; and

WHEREAS, this is an application under Z.R. §§73-36 and 73-03, to permit, within a C6-1 zoning district, a proposed physical culture establishment (“PCE”) to be located in portions of the cellar and first floor of an existing eight-story mixed-use building, contrary to Z.R. §32-00; and

WHEREAS, a public hearing was held on this application on April 25, 2006, after due notice by publication in *The City Record*, and then to decision on May 16, 2006; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

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

WHEREAS, the applicant proposes to operate the facility as a Crunch gym; and

WHEREAS, the subject site is located at the northeast corner of Fourth Avenue and East 12th Street, and has a lot area of 13,830 square feet; and

WHEREAS, the proposed PCE will occupy 13,793 square feet in the cellar and 11,682 sq. ft. on the first floor; and

WHEREAS, the applicant represents that the PCE will provide classes, instruction, and programs for physical improvement, bodybuilding, weight reduction, and aerobics; and

WHEREAS, the PCE will have the following hours of operation: 5:00 A.M. to 11:00 P.M, weekdays and 7:30 A.M. to 9:00 P.M., weekends; and

WHEREAS, at hearing, the Board observed that there are residences above the location of the proposed PCE; and

WHEREAS, in response, the applicant represents that the recommendations of the acoustics consultants, pertaining to noise attenuation, have been incorporated into the PCE’s design; and

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

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-027M, dated November 2, 2005, and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§73-36 and 73-03, to permit, within a C6-1 zoning district, a proposed physical culture establishment to be located in portions of the cellar and first floor of an existing eight-story mixed-use building, contrary to Z.R. §32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 9, 2006”-(3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on May 16, 2016;

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

THAT the hours of operation shall be limited to 5:00 A.M. to 11:00 P.M, weekdays and 7:30 A.M. to 9:00 P.M., weekends;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2006.

339-05-BZ

CEQR #06-BSA-035K

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, Inc., owner.

SUBJECT – Application November 25, 2005 – Under Z.R. §72-21 – To permit the proposed construction of a Yeshiva and is contrary to Z.R. Sections 33-121 (floor area) and 33-441 (front setbacks).

PREMISES AFFECTED – 3574 Nostrand Avenue, south side of Nostrand Avenue, north of Avenue W, Block 7386, Lot 131, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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, the decision of the Brooklyn Borough Commissioner, dated March 1, 2006, acting on Department of Buildings Application No. 301964890, reads, in pertinent part:

“1 - Proposed floor area is contrary to ZR § 33-121;

2 - Proposed front wall height and sky exposure plane is contrary to ZR § 33-431(a)”; and

WHEREAS, this is an application for a variance pursuant to Z.R. §72-21, to permit, on a site within an R4 (C1-2) zoning district, a proposed six-story plus cellar Use Group 3 yeshiva and use Group 4 synagogue, which does not comply with Floor Area Ratio (FAR), wall height, and sky exposure plane requirements for community facilities, contrary to Z.R. §§33-121 and 33-431; and

WHEREAS, a public hearing was held on this application on February 14, 2006, after due notice by publication in *The City Record*, with continued hearings on

April 4, 2006 and May 2, 2006, and then to decision on May 16, 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, Commissioner Chin, and Commissioner Collins; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, at hearing and through submissions, neighbors of the site provided testimony in opposition to the proposed development citing concerns about the scale of the building and potential shadow impacts, the large number of students, the hours of operation, traffic, noise from the play area, and garbage; these concerns are addressed below; and

WHEREAS, this application is being prosecuted on behalf of the Congregation Lev Bais Yaakov, a non-profit religious entity (hereinafter, the “Yeshiva”); and

WHEREAS, the subject premises is located on the western side of Nostrand Avenue, north of the intersection of Avenue W, and is improved upon with several one-story buildings, which are proposed to be demolished; and

WHEREAS, the applicant proposes to construct a 68’-5” high building (35 feet is the maximum permitted), with 36,260.31 sq. ft. of floor area (21,000 sq. ft. is the maximum permitted); a FAR of 3.45 (2.0 FAR is permitted for a community facility), with Use Group (“UG”) 3 yeshiva use space on the cellar through sixth floors, and UG 4 synagogue space on the first floor; and

WHEREAS, the proposed building also violates the sky exposure plane regulation at the front of the building at the fourth, fifth and sixth floors; and

WHEREAS, the applicant also proposes to have one side yard of 8’-6” and one of 8’-2” (there is no side yard requirement); a 30 ft. rear yard after the permitted first floor obstruction up to 23 ft. in height (a 20 ft. rear yard is required); and three parking spaces (none are required); and

WHEREAS, the applicant initially proposed a building with a 20 ft. foot rear yard but, in response to neighbors’ concerns and at the Board’s suggestion, moved the building forward 10 feet on the lot, reducing the total floor area by approximately 600 square feet and leaving an open area of ten feet between the building and adjacent properties at the rear at the first floor level; and

WHEREAS, further, at the Board’s suggestion, the applicant reduced the height of each floor by 8 inches, resulting in a reduction of the overall height from 75 ft. to 68’-5”; and

WHEREAS, the Board also notes that some of this reduction was the result of a higher cellar level than initially proposed; the applicant modified the cellar level because of concerns about the high water table present at the site; and

WHEREAS, consequently, the configuration of the building will be as follows: the first floor will be set back 10’-0” from the rear lot line to a height of 13’-3”; the second through sixth floors will be set back six feet, six inches from the front lot line and 30 feet from the rear lot line; and the total height will be 68’-5”, exclusive of mechanicals; and

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WHEREAS, the proposed building will contain 35 classrooms, administrative offices, a computer room, a science laboratory, a cafeteria and multi-purpose room, therapy rooms, counselor and teacher offices, and a play area to be located on the terrace at the second floor roof; and

WHEREAS, the applicant states that the following are the programmatic needs of the Yeshiva: (1) sufficient classroom and assembly space to accommodate all current and future students at one facility; and (2) a reasonably sized accessory synagogue; and

WHEREAS, as to the space needs, the applicant asserts that the Yeshiva's enrollment has increased significantly in recent years, requiring it to move five times within a nine-year period; currently, the school operates from two different facilities, with pre-school classes in one building and elementary classes in another; and

WHEREAS, the applicant asserts that having all of the classes of the Yeshiva centrally located in a single building will promote efficient use of its financial and administrative resources, and provide a superior religious educational atmosphere; and

WHEREAS, the proposed amount of classrooms (35) would accommodate the current enrollment of 312 students and allow for continued growth, including the establishment of high school grades; only 23 classrooms would be permitted as-of-right, which the Yeshiva states would not be sufficient; and

WHEREAS, the applicant cites to standards that establish the following standard space requirements for primary education facilities: 30 square feet for each younger student and 20 square feet for each older student; and

WHEREAS, the applicant submitted a tabular breakdown of the proposed rooms as to size and usage; and

WHEREAS, the Board accepts that having the various classes consolidated into one facility, with an accessory synagogue, and with space for establishment of a high school, is a legitimate programmatic need of the Yeshiva, based upon the cited efficiency and education goals; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the case law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: the existing site does not provide the requisite amount of lot area to comply with applicable FAR requirements and still allow development of a building that would meet the programmatic needs of the Yeshiva; and

WHEREAS, specifically, the applicant states that the additional floor area is necessary to create a sufficient amount of class rooms and accessory spaces that will accommodate the combined student body; and

WHEREAS, the applicant further states that the required FAR can not be accommodated within the as of right height and sky exposure plane parameters, thus necessitating the requested

waivers of these provisions; and

WHEREAS, the applicant claims that a complying building would result in irregular floor plates at the upper floors because of the sky exposure plane requirement, which would compromise the ability of the Yeshiva to occupy the building in a manner that meets the programmatic needs; and

WHEREAS, the applicant argues that the requested height and sky exposure plane waivers would enable the Yeshiva to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating a uniform floor plate, the waivers also allow the Yeshiva to provide 30 ft. deep rear yard above the first floor and 10 ft. of rear yard at the first floor, in addition to the proposed side yards, all which mitigates any impact on the properties to the rear; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address Z.R. §72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant also notes that the site is on the side of the block with the commercial overlay and is between two-story and one-story commercial buildings and two-story residences to the rear of the site; and

WHEREAS, the applicant also notes that there is a seven-story housing development across the street; and

WHEREAS, as noted above, the rear neighbors expressed concerns about the potential shadow impact the proposed building might have; and

WHEREAS, at the Board's request, the applicant a submitted shadow study, which charts the effect of both an as-of-right development and the proposed development, based upon four times during the year; and

WHEREAS, the shadow study demonstrates that both the as-of-right and proposed developments would cast the rear adjoining properties in shade until 11 a.m. and the houses on the properties only until 9 A.M., and that the difference between the as of right and proposed development is negligible; and

WHEREAS, the rear neighbors allege that the shadow study is faulty because the rear yard of the proposed building is shown as 40 feet rather than 30 feet above the first floor; and

WHEREAS, in response, the applicant notes that there is a ten ft. setback from the rear lot line at the first floor and that it is not added to the 30 ft. setback provided at the upper floors; 30

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ft. is the correct dimension the upper floor setback; and

WHEREAS, as to this setback, the Board observes that while the dimensions of the shadow study are difficult to read, it does appear that the 30 ft. setback is identified properly; and

WHEREAS, the Board also notes that the repositioning of the building towards the front lot line minimizes the impact of the proposed height and the shadow effect; and

WHEREAS, the rear neighbors also expressed concern about noise coming from the play area; and

WHEREAS, the applicant has agreed to limit the hours of play on the playground; and

WHEREAS, the hours will be: 8:30 A.M. through 4:30 P.M., Monday through Thursday and 8:30 am through 12:30 pm, Friday; and

WHEREAS, the Board notes that these hours are also the hours of operation for the Yeshiva; and

WHEREAS, at hearing, the Board also expressed concern about noise from the mechanicals, and suggested that the applicant locate the mechanicals to the top of the six story portion, away from the rear neighbors; the applicant subsequently submitted plans showing the mechanicals located on the top of the six-story portion; and

WHEREAS, additionally, the opposition expressed concern about potential traffic impact; and

WHEREAS, the applicant noted that the majority of students would arrive by school bus; and

WHEREAS, the applicant proposes to establish a designated bus loading zone; and

WHEREAS, the applicant also proposes to provide a shuttle bus for faculty members; and

WHEREAS, as to concern about increased garbage, the applicant notes that it will provide regularly scheduled garbage pick up and will maintain all garbage containers at the side of the building away from the residences at the rear; and

WHEREAS, the Board observes that aside from the height, sky exposure plane, and floor area waivers, the proposed bulk of the building and the uses therein are as of right; and

WHEREAS, the Board further observes that many mitigating measures have been incorporated into the design of the building that would not occur in an as of right scheme; and

WHEREAS, first, the Board observes that while religious schools, as a community facility use, are permitted to extend fully -into the rear yard to a height of 23 feet so long as there is only one story, the proposed building includes a 10 ft. setback from the rear lot line; and

WHEREAS, since the proposed building will be 13 feet, 3 inches high at the roof of the first floor, and sets back to 30 feet after that, no rear yard waiver is required; and

WHEREAS, further, the hours of the playground, the location of the mechanicals, and the shuttle bus service are all regulated per condition, and all of these mitigating measures would not be required in an as-of-right development; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding

neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Yeshiva could occur on the existing lot; and

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

WHEREAS, after accepting guidance from the Board as to the design and location of the building and the necessary waivers, the applicant amended the proposal to the current version, which the Board finds to be the minimum necessary to afford the Yeshiva the relief needed to both meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.06BSA035K, dated January 9, 2006; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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 Z.R. §72-21 and grants a variance to permit, on a site within an R4 (C1-2) zoning district, a proposed six-story plus cellar yeshiva and accessory synagogue, which does not comply with the floor area ratio,

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wall height, and sky exposure plane requirements for community facilities, contrary to Z.R. §§33-121 and 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 12, 2006"–(15) sheets; and *on further condition*:

THAT any change in ownership, control or ownership of the building shall require the prior approval of the Board;

THAT the hours of the playground are limited to 8:30 A.M. through 4:30 P.M., Monday through Thursday and 8:30 A.M. through 12:30 P.M., Friday;

THAT the Yeshiva will provide a shuttle bus for faculty and members to and from the site for so long as it occupies the subject site;

THAT there shall be no use of the rear setback area as a playground for students;

THAT the rear setback area shall be kept clean, and free and clear of debris and garbage;

THAT all fencing in the rear yard shall comply with Building Code regulations;

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

THAT the building mechanicals will be located on the portion of the building that rises to 68 feet, 5 inches, as indicated on the BSA-approved plans;

THAT roof-top mechanicals shall comply with all applicable Building Code and other legal requirements, as reviewed and approved by the Department of Buildings; and

THAT the following shall be the parameters of the proposed building: six stories plus a cellar, a community facility and total FAR of 3.45; lot coverage of 57.8 percent; a street wall height of 68 feet, 5 inches; and side and rear yards as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2006.

146-04-BZ

APPLICANT – Joseph Margolis for Jon Wong, Owner.
SUBJECT – Application April 5, 2006 – Pursuant to Z.R. §72-21 – to allow the residential conversion of an existing manufacturing building located in an M3-1 district; contrary to Z.R. §42-00.

PREMISES AFFECTED – 191 Edgewater Street, Block 2820, Lot 132, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joseph Margolis, Ivan Khory, Raymond Chan and Rebecca Pytosh.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

290-04-BZ

APPLICANT – Stuart A. Klein, Esq., for Alex Lokshin – Carroll Gardens, LLC, owner.

SUBJECT – Application August 20, 2004 – under Z.R. §72-21 to permit, in an R4 zoning district, the conversion of an existing one-story warehouse building into a six-story and penthouse mixed-use residential/commercial building, which is contrary to Z.R. §§22-00, 23-141(b), 23-631(b), 23-222, 25-23, 23-45, and 23-462(a).

PREMISES AFFECTED – 341-349 Troy Avenue (a/k/a 1515 Carroll Street), Northeast corner of intersection of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 11, 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.

For Opposition: Charles O'Connor and Downies L. Scruggo.

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

334-04-BZ

APPLICANT – Sheldon Lobel, P.C., for L & L Realty, owner. Great Roosevelt Plaza Corporation, lessee.

SUBJECT – Application October 8, 2004 – Variance Z.R. §72-21 to permit the proposed construction of a seven-story mixed-use building containing retail, general office and community facility space. No parking will be provided. The site is currently occupied by two commercial buildings which will be demolished as part loading of the proposed action. The site is located is located in a C4-2 zoning district. The proposal is contrary to Z.R. §36-21 (Required parking), §36-62 (Required loading berth), and §33-432(Sky exposure plane and setback requirements).

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PREMISES AFFECTED – 135-28 Roosevelt Avenue, Roosevelt Avenue between Prince Street and Main Street. Block 5036, Lots 26(fka 25/26), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most and Hiram Rothkrug.

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

66-05-BZ

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

SUBJECT – Application March 16, 2005 – Special Permit filed Under Z.R. §§11-411 and 11-413 of the zoning resolution to request the instatement 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 C2-4/R7-1 zoning district.

PREMISES AFFECTED – 1236 Prospect Avenue, southeast corner of Prospect Avenue and Home Street, Block 2693, Lot 29, Borough of The Bronx.

COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Josh Rinesmith.

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 June 13, 2006, at 1:30 P.M., for decision, hearing closed.

108-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #74, the companion case, 109-05-BZ is Tax Lot #76 on the same zoning lot.

PREMISES AFFECTED – 224-22 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 13, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 June 13, 2006, at 1:30 P.M., for decision, hearing closed.

109-05-BZ

APPLICANT – Rothkrug Rothkrug, Weinberg & Spector, for Avi Mansher, owner.

SUBJECT – Application May 11, 2005 – Under Z.R. §72-21 to permit the construction of a one-family semi attached dwelling that does not provide the required front yard, contrary to section 23-462 of the zoning resolution. The site is located in an R3-2 zoning district. The subject site is Tax Lot #76, the companion case, 108-05-BZ is Tax Lot #74 on the same zoning lot.

PREMISES AFFECTED – 224-26 Prospect Court, northwest corner of Prospect Court and 225th Street, Block 13071, Lot 76, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug

For Opposition: Judith Charrington.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 June 13, 2006, at 1:30 P.M., for decision, hearing closed.

165-05-BZ

APPLICANT – Sullivan Chester & Gardner, P.C., for 801-805 Bergen Street, LLC, owner.

SUBJECT – Application July 25, 2005 – Variance Z.R. §72-21 to permit the propose four-story residential building, located in an M1-1 zoning district.

PREMISES AFFECTED – 799-805 Bergen Street, North Side, 156’-3” East of Grand Avenue, Block 1141, Lots 76-79, Borough of Brooklyn

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jeffrey A. Chester and Roberto DeLos Rios.

ACTION OF THE BOARD – Laid over to July 18,

MINUTES

2006, at 1:30 P.M., for continued hearing.

202-05-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner; Inn Spa World, Inc., lessee.

SUBJECT – Application August 24, 2005 – Under Z.R. to §73-36 to allow the proposed Physical Culture Establishment in a Manufacturing (M1-1) zoning district.

PREMISES AFFECTED – 11-11 131st Street, between 11th and 14th Avenues, Block 4011, Lot 24, Borough of Queens

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Steve Chon.

For Opposition: Joan Vogt for Senator Padaman, Councilman Tony Avella.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

352-05-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Peter Procops, owner; McDonald’s Corporation, owner.

SUBJECT – Application December 14, 2005 – Z.R. §73-243 proposed re-establishment of an expired special permit for an eating and drinking establishment with an accessory drive-through, located in a C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection at Beach Channel Drive, Block 15709, Lot(s) 101, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jeffrey Chester and Gerald Laurino.

ACTION OF THE BOARD – Laid over to June 20, 2006, at 1:30 P.M., for continued hearing.

28-06-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Plutchok, owner.

SUBJECT – Application February 16, 2006 – Special Permit, Z.R. §73-622 for the enlargement of an existing single family home which seeks to vary Z.R. §23-141 for increase in floor area, lot coverage and open space ratio, Z.R. §23-461 for side yards and Z.R. §23-47 for less than the required rear yard. The premise is located in an R3-1 zoning district.

PREMISES AFFECTED – 158 Beaumont Street, west side, 300’ north of Oriental Boulevard, between Oriental Boulevard and Hampton Avenue, Block 8733, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

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 June 13,

2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.

Adjourned: 3:30P.M.