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AND APPEALS

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CONTENTS

CONTENTS

MINUTES of Regular Meetings,
Tuesday, September 12, 2006

Affecting Calendar Numbers:

308-64-BZ	747-751 Madison Avenue, Manhattan
1077-66-BZ	1320 Richard Terrace, Staten Island
405-71-BZ	3355 East Tremont Avenue, Bronx
203-92-BZ	70-20 Austin Street, Queens
129-93-BZ	151-155 East 86th Street, Manhattan
130-93-BZ	157-161 East 86th Street, Manhattan
68-94-BZ, Vol. II	2100 Bartow Avenue, Bronx
114-94-BZ, Vol. II	44 Victory Boulevard, Staten Island
212-03-A	129-32 Hook Creek Boulevard, Queens
213-03-A	129-36 Hook Creek Boulevard, Queens
341-43-BZ	3319 Atlantic Avenue, Brooklyn
595-44-BZ, Vol. II	30 Central Park South, Manhattan
866-49-BZ, Vol. III	200-01/07 47th Avenue, Queens
558-51-BZ	68-22 Northern Boulevard, Queens
182-95-BZ	2465/73 Broadway, Manhattan
183-95-BZ	2473/5 Broadway, Manhattan
23-04-BZ	1150 East 23rd Street, Brooklyn
346-05-A	51-17 Rockaway Beach Boulevard, Queens
353-05-BZY	614 7th Avenue, Brooklyn
356-05-A & 357-05-A	150 and 152 Beach 4th Street, Queens
12-06-A	37-19 Regatta Place, Queens
93-06-A	50-08 88th Street, Queens
135-06-A	37 Newport Walk, Queens
34-06-A	41-23 156th Street, Queens
120-06-A	1427 East 17th Street, Brooklyn

CONTENTS

DOCKETS

New Case Filed Up to September 12, 2006

213-06-A
72-19 Grand Avenue, Northwest corner of Grand Avenue and 72nd Place., Block 2506, Lot 96 (tent.), Borough of **Queens, Community Board: 5**. General City Law Section 35 - To allow the construction of a new structure in the bed of a mapped street.

214-06-BZ
196-25 Hillside Avenue, North west corner of 197th Street, Block 10509, Lot 265, Borough of **Queens, Community Board: 8**. (SPECIAL PERMIT) 11-411 and 73-01(d) - Propose to reinstate the variance that was granted under calendar # 673-53-BZ since it has lapsed.

215-06-BZ
202-06 Hillside Avenue, South east corner of Hillside Avenue and 202nd Street., Block 10496, Lot 52, Borough of **Queens, Community Board: 12**. (SPECIAL PERMIT) 11-40 - For the re-establishment and extension of term for an existing gasoline station, which has been in continuous operation since 1955.

216-06-BZ
35-17 Junction Boulevard, Located on the east side of Junction Boulevard between 35th and 37th Avenues., Block 1737, Lot 49, Borough of **Queens, Community Board: 4**. (SPECIAL PERMIT) 11-411, 11-412 - To allow the operation of an automotive service stration.

217-06-A
40-54 Francise Lewis Boulevard, North side of the intersection of Francise Lewis Boulevard and 42nd Avenue., Block 5361, Lot 10, Borough of **Queens, Community Board: 11**. General City Law Section 35 - To permit the proposed construction in the bed of Francise Lewis Boulevard, a legally mapped street.

218-06-BZ
885 Second Avenue, Westerly side of Second Avenue between East 47th Street and East 48th Street., Block 1321, Lot 22, Borough of **Manhattan, Community Board: 6**. (SPECIAL PERMIT) 73-36 - To allow the operation of a Physical Culture Establishment in a portion of the cellar level of a forty six story commercial building.

219-06-A
241-10 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1003, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 & Section 35 - To permit the proposed development.

220-06-A
241-16 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1005, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

212-06-BZ
242-02 61st Avenue, Douglaston Parkway and 61st Avenue., Block 8286, Lot 185, Borough of **Queens, Community Board: 11**. Under 72-21 - To convert an existing 41,913 sf supermarket (UG6) into an electronic store with no limaations on floor area (UG10).

221-06-A
241-22 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1007, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

222-06-A
241-28 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1009, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

223-06-A
241-15 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1004, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

224-06-A
241-21 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1006, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

DOCKET

225-06-A
241-25 128th Drive, Brookville Boulevard and 128th Road, Block 12886, Lot 1008, Borough of **Queens, Community Board: 13**. General City Law Section 36, Article 3 - To permit the proposed development.

226-06-BZ
1766 East 28th Street, Between Avenue R and Quentin Road, Block 6810, Lot 34, Borough of **Brooklyn, Community Board: 15**. (SPECIAL PERMIT) 73-622 - To enlarge a semi detached, single family residence.

227-06-BZ
2066 Richmond Avenue, North of Knapp Street, Block 2102, Lot 90, Borough of **Staten Island, Community Board: 2**. Under 72-21 - To permit the proposed office building (UG6) within the underlying R3-2 zoning district.

228-06-A
2066 Richmond Avenue, North of Knapp Street, Block 2102, Lot 90, Borough of **Staten Island, Community Board: 2**. General City Law Section 35 - To permit a portion of the proposed development.

229-06-A
607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of **Queens, Community Board: 14**. Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which fails to comply with various bulk provisions of the Zoning Resolutions and provisions of the Building Code . Premises is located in an R-4 Zoning District .

230-06-A
107 Beach 220th Street, East side of Beach 220th Street 119.29' south of Breezy Point Boulevard., Block 16350, Lot 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3 - Proposed alteration and enlargement of existing single family dwelling.

231-06-BZY
102 Greaves Avenue, Intersection of Greaves Avenue and Dewey Avenue., Block 4568, Lot 40, Borough of **Staten Island, Community Board: 3**. Extension of Time - 11-332 - For construction and obtain a Certificate of Occupancy for minor development.

232-06-A
28 Sand Court, South side of Sand Court, 157 feet west of Fathoe Capodanno Boulevard., Block 3122, Lot 213, Borough of **Staten Island, Community Board: 2**. General City Law Section 36, Article 3 - Proposed two-family dwelling.

233-06-BZ
2342 Haviland Avenue, Bounded by Zerega Avenue and Havemeyer Avenue., Block 3827, Lot 51, Borough of **Bronx, Community Board: 9**. Revocation of Permits - After work was performed, plans submitted to NYC Department of Buildings was self-certified.

234-06-BZ
1085 East 22nd Street, Suite 2100, East side of East 22nd Street between Avenue J and Avenue K., Block 7604, Lot 38, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - To allow the enlargement of a single family residence.

235-06-BZ
3155 Bedford Avenue, East side of Bedford Avenue between Avenue J and Avenue K., Block 7607, Lot 33, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - To allow the enlargement of a single family residence.

236-06-BZ
1500 East 21st Street, 115' north of intersection formed by East 21st Street and Avenue N., Block 7656, Lot 4, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - Proposed extension to dwelling.

237-06-BZ
1462 East 26th Street, West side 333'7" north of the intersection formed by East 26th Street and Avenue O., Block 7679, Lot 79, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622 - Proposed extension for one family dwelling.

238-06-A
110-124 East 12th Street, South side of 12th Street between third Avenue and Fourth Avenue., Block 556, Lot 48 & 49, Borough of **Manhattan, Community Board: 3**. Appeal - Department of Building refusing to revoke permits.

239-06-A
8 Suffolk Walk, West side 110.3' south of Oceanside Avenue., Block 16350, Lot p/o 400, Borough of **Queens, Community Board: 14**. General City Law Section 36, Article 3 - Propose to enlarge the existing first floor and construct a second story on a home.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 24, 2006, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 24, 2006, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

181-38-BZ
APPLICANT – Michael Cosentino, for Michael Innella, owner.
SUBJECT – Application June 28, 2006 – Pursuant to ZR 11-411 for an extension of term to a gasoline service station (Sunoco) for a ten year term which expired on June 3, 2005, and Amendment to covert the existing service repair bays to a convenience store and a waiver to file the application more than 30 days after the expiration of term. The premise is located in an R-3A(CD) zoning district.
PREMISES AFFECTED – 410-412 City Island Avenue, corner of Ditmars Street, Block 5645, Lot 6, Borough of The Bronx.
COMMUNITY BOARD #10BX

558-71-BZ
APPLICANT – NYC Board of Standards and Appeals.
OWNER OF PREMISES: Dr. Anthony C. Banas
SUBJECT – Application January 27, 2006 – to consider dismissal for lack of prosecution.
PREMISES AFFECTED – 1949 Richmond Avenue, north of Rockland Avenue, Block 2030, Lot 1, Richmond Borough of Staten Island.
COMMUNITY BOARD #2SI

60-82-BZ
APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.
SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to section 11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.
PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.
COMMUNITY BOARD #2Q

31-06-BZ
APPLICANT – NYC Board of Standards and Appeals
OWNER OF PREMISES: Frank Falanga.
SUBJECT – Application February 24, 2006 – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – 102-10 159th Road, Block 14182, Lot 88, Borough of Queens.
COMMUNITY BOARD #10Q

APPEALS CALENDAR

337-05-A
APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.
SUBJECT – Application November 23, 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 R4 zoning district. Premises is located in a R4-A zoning district.
PREMISES AFFECTED – 1717 Hering Avenue, beween Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.
COMMUNITY BOARD #11BX

102-06-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marie & Louis Livan, lessees.
SUBJECT –Application May 23, 2006 - Proposed reconstruction and enlargement of an existing single family dwelling located in the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street contrary to Section 35 , Article 3 of General City Law.
PREMISES AFFECTED – 1 Arcadia Walk, intersection of Oceanside Avenue and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

125-06-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative Inc., owner;
SUBJECT – Application June 14, 2006 – Proposed reconstruction and enlargement of an existing single family dwelling located partially in the bed of mapped street (Breezy Point Blvd.) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located in the bed of mapped street and service road is contrary to Department of Buildings Policy. Premises is located within an R4 Zoning District.
PREMISES AFFECTED – 43 Kildare Walk, northeast corner of Kildare Walk and Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

230-06-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald & Arlyn Kelly, owners.
SUBJECT – Application September 8, 2006 – Reconstruction and enlargement of an existing one family dwelling not fronting on a mapped street, contrary to Article 3, Section36 of the General City Law. Premise is located within the R-4 zoning district.
PREMISES AFFECTED – 107 Beach 220th Street, east side Beach 220th Street, 119.23' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

270-06-A
APPLICANT – Commissioner of New York City Department of Buildings.
OWNER: Elba & Jeanette Bozzo
LESSEE: Relais and Chateaux
SUBJECT –Application October 5, 2006 to revoke Certificate of Occupancy #26180, on the grounds that the non conforming Use Group 5 of the premises has been discontinued for a period of two or more years and therefore has lapsed pursuant to ZR Section 52-61
PREMISES AFFECTED – 148 East 63rd Street, 120' from south east corner of Lexington Avenue and East 63rd Street, Block 1397, Lot 48, Borough of Manhattan.
COMMUNITY BOARD #8M

OCTOBER 24, 2006, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 24, 2006, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

36-06-BZ
APPLICANT – Sheldon Lobel, P.C., for The RNR Group Ltd., owner.
SUBJECT – Application March 1, 2006 – Special Permit: 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 2,485 square feet.
PREMISES AFFECTED – 2125 Utica Avenue, east side of Utica Avenue between Avenue M and Avenue N, Block 7875, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #18BK

41-06-BZ & 42-06-BZ
APPLICANT– Steven Sinacori, Stadtmauer Bailkin, LLP, for New York Hospital Queens, owner.
SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §§24-33, 24-34 & 24-35.
42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.
PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1,19,21,24,25,26,28, Borough of Queens.
COMMUNITY BOARD # 7Q

64-06-BZ
APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.
SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. 42-10.

PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.
COMMUNITY BOARD #2M

121-06-BZ
APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.
SUBJECT – Application June 12, 2006 – Application filed pursuant to sections 11-411 & 11-12 of the zoning resolution to request the re-establishment of the previously granted variance permitting the operation of an automotive service station in a R7-1 zoning district and to legalize certain minor amendments made to the previously approved plans.
PREMISES AFFECTED – 495 East 180th Street, northwest corner of the intersection formed between 180th Street and Bathgate Avenue, Block 3047, Lot 21, Borough of The Bronx.
COMMUNITY BOARD #6BX

158-06-BZ
APPLICANT– Lewis E. Garfinkel, R.A., for Debbie Tokayer, owner.
SUBJECT – Application July 18, 2006 – Pursuant to ZR 73-622 for the enlargement of a single family residence which is contrary to ZR 23-141 for open space and floor area, ZR 23-461 for less than the minimum side yards and ZR 23-47 for less than the required rear yard. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1410 East 22nd Street, West side of East 22nd Street, 380' south of Avenue M, Block 7657, Lot 66, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 12, 2006
10:00 A.M.

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, June 20, 2006 as printed in the bulletin of June 29, 2006, Vol. 91, No. 26. If there be no objection, it is so ordered.

SPECIAL ORDER CALENDAR

308-64-BZ
APPLICANT – Sheldon Lobel, P.C., for 30 East 65th Street Corporation, owner.
SUBJECT – Application June 2, 2006 – Application is a reopening for an Extension of Term/Waiver of a variance for the use of 15 surplus attended transient parking spaces within a multiple dwelling presently located in a C5-1/R8/MP zoning district. The original grant of the variance by the Board of Standards and Appeals was made pursuant to Section 60(3) of the Multiple Dwelling Law.
PREMISES AFFECTED – 747-751 Madison Avenue, a/k/a 30-38 East 65th Street, Northeast corner of East 65th Street, Block 1379, Lot 51, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Ron Mandel.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of the prior grant, which expired on June 2, 1979; and

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

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

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

WHEREAS, on June 2, 1964, the Board granted a waiver under the subject calendar number to allow 15 transient parking spaces in the cellar accessory garage of a multiple dwelling located at the subject premises, for a term of 15 years which expired on June 2, 1979; and

WHEREAS, the applicant represents that the grant was not renewed due to administrative oversight; and

WHEREAS, the site is also the subject of Board action under BSA Cal. No. 309-64-A, which permitted daily transient parking, pursuant to Section 60 of the Multiple Dwelling Law; no term was associated with this grant; and

WHEREAS, the Board observed, on its site visit and through review of submitted photographs, that the required sign indicating building residents' right to recapture parking spaces was not permanently affixed to the wall in a conspicuous space, as required; and

WHEREAS, at hearing, the Board asked the applicant to properly secure the sign to the wall in a frame in a visible location; and

WHEREAS, the applicant agreed to frame the sign properly and affix it to the wall in a permanent fashion; and

WHEREAS, the applicant provided photographic evidence that the sign had been installed and permanently affixed to the wall to the Board's satisfaction; and

WHEREAS, accordingly, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, and *reopens* and *amends* the resolution having been adopted on June 2, 1964, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from September 12, 2006, the date of this grant, to expire on September 12, 2016; *on condition* that that all work shall substantially conform to drawings filed with this application and marked "Received August 25, 2006"–(2) sheets; and *on further condition*:

THAT this term shall expire on September 12, 2016;

THAT there shall be a maximum of 15 parking spaces used for transient parking at the cellar level at the 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 located in a conspicuous place within the garage, permanently affixed to the wall;

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

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

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."

(DOB Application No. 104368391)

Adopted by the Board of Standards and Appeals, September 12, 2006.

1077-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Richmond Petroleum, Incorporated, owner.

SUBJECT – Application May 10, 2006 – Pursuant to ZR §72-01 & §72-22 to reopen and amend the BSA resolution for a change of use to an existing gasoline service station with minor auto repairs. The amendment is to convert the existing auto repair bays to a convenience store as accessory use to an existing gasoline service station. The premise is located in C2-2 in an R3-2 zoning district.

PREMISES AFFECTED – 1320 Richard Terrace, Southwest corner of Bement Avenue, Block 157, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Carl Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a re-opening and an amendment to the previously granted variance for a gasoline service station with accessory uses; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends conditional approval of this application; certain of the conditions are addressed below, including that a landscaped buffer zone be maintained along the residential property line; and

WHEREAS, the premises is located on the southwest corner of Bement Avenue and Richmond Terrace; and

WHEREAS, the site is located within a C2-2 (R3-2) zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 14, 1967 when, under the subject calendar number, the Board granted an application for the reconstruction of a prior gasoline service station; and

WHEREAS, subsequently, the grant was amended twice to permit an extension of time to complete construction; and

WHEREAS, on November 14, 2000, the Board granted an amendment to permit the installation of a metal canopy and the enlargement of the accessory building to create an attendant area, convenience store, and repair service area; and

WHEREAS, the applicant represents that the accessory building was never enlarged and the convenience store never established; and

WHEREAS, the applicant now seeks to make the following changes: an enlargement of the proposed accessory building by an additional 586.75 sq. ft., the provision of eight accessory parking spaces, the addition of two non-illuminated signs, and the addition of landscaping along the western edge of the property; and

WHREEAS, the applicant represents that the existing floor area of the accessory building is 1,344 sq. ft and after the proposed enlargement, the total floor area will be 1,930.75 sq. ft.; and

WHEREAS, at hearing, the Board asked the applicant to clarify the hours of operation for the service station and proposed convenience store; and

WHEREAS, the applicant responded that the station has been open for 24 hours a day and represents that there have not been any complaints; and

WHEREAS, additionally, the Board requested that the applicant maintain the site, specifically including the sidewalk, in good repair; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds the proposed amendments are appropriate, with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, as adopted on March 14, 1967, so that as amended this portion of the resolution shall read: "to permit the enlargement of the accessory service building and to permit its conversion to an accessory convenience store; the provision of eight accessory parking spaces; the addition of two non-illuminated signs, and the addition of landscaping, *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received May 10, 2006"-(3) sheets and "Received August 29, 2006"-(2) sheets; and *on further condition*:

THAT the sidewalk shall be repaired and maintained in good repair;

THAT planting along the westerly and southwesterly lot lines shall be planted and maintained;

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

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

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

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

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

(DOB Application No. 500828303)

Adopted by the Board of Standards and Appeals, September 12, 2006.

405-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Sarlanis Enterprises, LLC, owner; Amerada Hess Corporation, lessee.
SUBJECT – Application April 21, 2006 – Pursuant to ZR §73-11 for the proposed redevelopment of an existing automotive service station (Shell Station) with accessory uses (UG16) to a Gasoline Service Station (Hess) with an accessory convenience store (UG16).
PREMISES AFFECTED – 3355 East Tremont Avenue, eastern side of East Tremont Avenue at the intersection with Baisley Avenue, Block 5311, Lot 7, Borough of The Bronx.
COMMUNITY BOARD #10BX
APPEARANCES –
For Applicant: Josh Rinesmith.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to make modifications to an existing gasoline service station, including the construction of an accessory convenience store; and

WHEREAS, a public hearing was held on this application on July 18, 2006, after due notice by publication in the *City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the east side of East Tremont Avenue at the intersection of Baisley Avenue, and is within C2-2/R4-A and R4A zoning districts; and

WHEREAS, the site has approximately 22,650 sq. ft. of lot area; and

WHEREAS, on December 14, 1971, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-211, 73-212 and 73-52, to permit the construction of an automotive service station with accessory uses extending into the R4A district; and

WHEREAS, subsequently, the grant was amended, at various times, most recently on March 17, 1987, to permit several site modifications; and

WHEREAS, the site is now occupied with a gasoline service station which includes a 2,167 sq. ft. building at the rear of the lot with an accessory sales area, an attendant's office, and storage; the building also has three automotive service bays which are used for minor automotive repairs and as a lubritorium; and

WHEREAS, approximately one-third of the existing building extends into the R4A district; and

WHEREAS, the applicant now seeks to amend the previously approved plans to permit the replacement of the automotive service building with an accessory convenience store, the reconfiguration of the site, and to add a pump for diesel fuel; and

WHEREAS, specifically, the applicant proposes to replace the existing building with a 2,478 sq. ft. accessory convenience store, with approximately one-half of the new building located in the R4A zoning district; and

WHEREAS, the applicant proposes to install a six-foot tall opaque fence along the rear lot line abutting the adjacent residential properties; and

WHEREAS, additionally, the applicant proposes to plant trees along the fence to provide a buffer between the service station and the residences; and

WHEREAS, at hearing, the Board asked the applicant if the convenience store or the proposed diesel fuel pump would increase the traffic at the site; and

WHEREAS, the applicant responded that gas stations and accessory convenience stores are not end destinations, and serve vehicles already in the existing traffic flow; thus, there will not be an increase in traffic on the surrounding roadways; and

WHEREAS, further, the applicant submitted an analysis from a traffic consultant which stated that traffic would not be increased as a result of the accessory convenience store and the diesel fuel pump; and

WHEREAS, the Board finds that the traffic analysis satisfactorily addresses its concerns about potential traffic impacts; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the finding that the proposed amendments are appropriate, with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated December 14, 1971, so that as amended this portion of the resolution shall read: "to grant an amendment to permit the proposed site modifications and construction of an accessory convenience store *on condition* that the use and operation of the gasoline service station shall substantially conform to BSA-approved plans marked "Received August 8, 2006"–(6) sheets; and *on further condition*:

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

THAT the fence around the perimeter of the site shall be 100 percent opaque;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 201042139)

Adopted by the Board of Standards and Appeals, September 12, 2006.

203-92-BZ

APPLICANT – Sullivan, Chester & Gardner, P.C., for Austin-Forest Assoc., owner; Lucille Roberts Org., d/b/a Lucille Roberts Figure Salon, lessee.
SUBJECT – Application January 26, 2005 – Extension of Term/Amendment/Waiver for a physical culture establishment. The premise is located in an R8-2 zoning district.
PREMISES AFFECTED – 70-20 Austin Street, south side, 333' west of 71st Avenue, Block 3234, Lot 173, Borough of Queens.
COMMUNITY BOARD #6Q
APPEARANCES –
For Applicant: Jeffrey Chester.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment for minor modifications to the interior, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on March 1, 2004; and

WHEREAS, a public hearing was held on this application on August 9, 2005, after due notice by publication in *The City Record*, with continued hearings on September 25, 2005, November 15, 2005, January 24, 2006, May 9, 2006, July 25, 2006 and August 15, 2006, and then to decision on September 12, 2006; and

WHEREAS, Community Board 6, Queens, recommends approval of this application on the condition that all outstanding DOB violations be resolved; and

WHEREAS, the Queens Borough President recommends approval of this application on the condition that handicapped-accessible ramps and bathrooms be provided; and

WHEREAS, the subject premises is located on the south side of Austin Street, 333 ft. west of 71st Avenue; and

WHEREAS, the site is occupied by a two-story with cellar building, located within a C8-2 zoning district; and

WHEREAS, on March 1, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the re-establishment of a PCE in the subject building for a term of ten years; and

WHEREAS, the prior special permit, under BSA Cal. No. 869-82-BZ, was not renewed and lapsed; and

WHEREAS, the PCE occupies the cellar and first floor and commercial office uses occupy the second floor; and

WHEREAS, the PCE is operated as a Lucille Roberts fitness center; and

WHEREAS, the instant application seeks to make minor modifications to the interior; and

WHEREAS, the applicant notes that the BSA-approved plans indicate that the second floor would be used by the PCE; and

WHEREAS, the applicant states that the PCE only occupies the first floor and cellar; and

WHEREAS, additionally, the applicant seeks a new ten-year term; and

WHEREAS, the Board expressed concern that the PCE had several open violations and was not operating in compliance with Local Law 58/87 or with a public assembly permit; and

WHEREAS, additionally, the Board was concerned that the operator of the PCE had not obtained a certificate of occupancy since 1992; and

WHEREAS, initially, the applicant was unable to resolve the violations and non-compliance; and

WHEREAS, in response to the Board's concerns, the applicant stated that a waiver of 58/87 was being sought from the Mayor's office; and

WHEREAS, ultimately, the applicant failed to obtain a waiver of Local Law 58/87 from the Mayor's office; and

WHEREAS, at the Board's request, the applicant revised the plans to show compliance with Local Law 58/87, specifically, to include an access ramp and handicapped-accessible bathrooms; and

WHEREAS, accordingly, the Board finds that a ten-year extension and the proposed amendments are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated March 1, 1994, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the proposed modifications to the interior of the PCE; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received September 1, 2006"–(3) sheets; and *on further condition*:

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

THAT this grant shall be limited to a term of ten years from March 1, 2004, expiring March 1, 2014;

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

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

THAT all required permits, including a public assembly permit, shall be obtained within three months from the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, September 12, 2006.

129-93-BZ

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

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

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

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to legalize modifications to the interior layout, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on November 15, 2004; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

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

WHEREAS, the subject premises is located on the north side of East 86th Street, 62 ft. east of Lexington Avenue; and

WHEREAS, the site is occupied by a five-story with cellar commercial building, located within a C2-8A/C5-1A zoning district; and

WHEREAS, on November 15, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an existing PCE and to permit the expansion of the PCE onto the fifth floor and fifth-floor mezzanine of the adjoining five-story and cellar commercial building; and

WHEREAS, the term of this grant expired on November 15, 2004; and

WHEREAS, as approved, the PCE occupies the cellar through fourth floors, including mezzanines of the subject building; and

WHEREAS, the PCE also occupies portions of the adjoining building at 157-161 East 86th Street, which was approved under BSA Cal No. 130-93-BZ; and

WHEREAS, an application for an amendment to legalize additional floor area at 157-161 East 86th Street and for an extension of term was brought concurrently with this application; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, the instant application seeks to legalize modifications to the layout on the cellar through fourth floors of the subject building; and

WHEREAS, these modifications include the conversion of an aerobics area office space, the addition of a childcare area, the removal of one squash court, and the reconfiguration of exercise equipment rooms; and

WHEREAS, additionally, the applicant seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing the Board asked the applicant to address the PCE's open DOB violations; and

WHEREAS, in response, the applicant submitted a statement into the record indicating that none of the violations affect egress and safety and all will be resolved through the course of obtaining the new certificate of occupancy; and

WHEREAS, accordingly, the Board finds that the proposed legalization and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated November 15, 1994, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the legalization of interior layout modifications; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received April 27, 2006"–(8) sheets; and *on further condition*:

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

THAT this grant shall be limited to a term of ten years from November 15, 2004, expiring November 15, 2014;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 103915355)

Adopted by the Board of Standards and Appeals, September 12, 2006.

130-93-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 161 East 86th Street, LLC, owner; TSI East 86th Street, Inc., lessee.
SUBJECT – Application September 21, 2004 – Pursuant to ZR §73-11 to re-open and amend the BSA resolution for the Extension of Term of a Physical Culture Establishment (New York Sports Club) which occupies the fifth floor and mezzanine of a five-story commercial building. This Application is also seeking an Amendment to legalize the expansion in floor area of the P.C.E. into the third and fourth floors of the commercial building. This is companion to BSA Cal. 129-93-BZ.
PREMISES AFFECTED – 157-161 East 86th Street, north side of East 86th Street, 139' of Lexington Avenue, Block 1515, Lot 26, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Lyra Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an amendment to legalize additional floor area, and an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on November 15, 2004; and

WHEREAS, a public hearing was held on this application on July 11, 2006, after due notice by publication in *The City Record*, with continued hearings on August 22, 2006, and then to decision on September 12, 2006; and

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

WHEREAS, the subject premises is located on the north side of East 86th Street, 139 ft. east of Lexington Avenue; and

WHEREAS, the site is occupied by a five-story with cellar commercial building, located within a C2-8A zoning district; and

WHEREAS, on November 15, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the legalization of an expansion of an existing PCE in an adjoining building onto the fifth floor and fifth-floor mezzanine of the subject five-story and cellar commercial building; and

WHEREAS, the term of this grant expired on November 15, 2004; and

WHEREAS, as approved, the PCE occupies the fifth floor and fifth floor mezzanine; and

WHEREAS, the PCE also occupies the adjoining building at 151-155 East 86th Street, which was approved under BSA Cal. No. 129-93-BZ; and

WHEREAS, an application for an amendment to legalize interior layout modifications at 151-155 East 86th Street and for an extension of term was brought concurrently with this application; and

WHEREAS, the PCE is operated as a New York Sports Club; and

WHEREAS, the instant application seeks to legalize minor modifications to the layout and an increase to the floor area; and

WHEREAS, specifically, the PCE no longer occupies the fifth floor and fifth-floor mezzanine (3,423 sq. ft. total floor area), but now occupies the entire third and fourth floors (13,668 sq. ft. total); and

WHEREAS, the applicant represents that this increase in floor area has not caused a significant increase to the use and occupancy, but has allowed for the facility to expand and provide improved services; and

WHEREAS, additionally, the applicant seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing the Board asked the applicant to address the PCE's open DOB violations; and

WHEREAS, in response, the applicant submitted a statement into the record indicating that none of the violations affect egress and safety and all will be resolved through the course of obtaining the new certificate of occupancy; and

WHEREAS, accordingly, the Board finds that the proposed legalization and ten-year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated November 15, 1994, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant and to permit the legalization of layout modifications and an increase in floor area; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received July 31, 2006"–(3) sheets; and *on further condition*:

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

THAT this grant shall be limited to a term of ten years from November 15, 2004, expiring November 15, 2014;

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

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

THAT all conditions from prior resolutions not

specifically waived by the Board remain in effect;

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

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

(DOB Application No. 103360220)

Adopted by the Board of Standards and Appeals, September 12, 2006.

68-94-BZ, Vol. II

APPLICANT – Cozen O'Connor, for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application June 30, 2006 – This application is to Reopen and Extend the Time to Obtain a Certificate of Occupancy for the operation of a PCE (Bally Total Fitness) on the first and second floors of the Co-Op City Bay Plaza shopping center which expires on August 23, 2006. The requested amount of time is 18 months. The premise is located in an C4-3 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Southside at eastern-most side of Baychester Avenue, Block 5141, Lot 810, Borough of the Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment for an extension of time to obtain a certificate of occupancy for a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C3-4 district, the operation of a PCE for a term of ten years; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-Op City Bay Plaza shopping center and occupies 20,290 sq. ft. of floor area; and

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

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years to expire on November 1, 2014; and

WHEREAS, a condition of the prior grant was that a certificate of occupancy be obtained within 18 months; and

WHEREAS, the applicant represents that, per the lease agreement, the owner of the shopping center is required to obtain a new certificate of occupancy; and

WHEREAS, however, the applicant represents that DOB will permit the PCE to obtain a separate address for the facility so that it may obtain a certificate of occupancy independently of the one for the shopping center; and

WHEREAS, the applicant states that an additional 18 months are required to obtain a new certificate of occupancy for the PCE; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said resolution having been adopted on November 1, 1994, so that as amended this portion of the resolution shall read: "to permit an 18-month extension of time to obtain a certificate of occupancy, *on condition*:

THAT a new certificate of occupancy shall be obtained by March 12, 2008, 18 months from the date of this grant;

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

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

(DOB Application No. 200925721)

Adopted by the Board of Standards and Appeals, September 12, 2006.

114-94-BZ, Vol. II

APPLICANT – Ralph Giordano, AIA for Freehold SL Limited Partnership, owner; Kentucky Fried Chicken Corporation, lessee.

SUBJECT – Application March 24, 2006 – Extension of Term/Waiver – to allow the continuation of a drive-thru-facility that is accessory to an existing eating and drinking establishment located in a C1-2 zoning district which expired on July 2, 2005. The application seeks to renew the term for an additional 5 years.

PREMISES AFFECTED – 44 Victory Boulevard, Bay Street and Van Duzer Street, Block 498, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....

0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, 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 July 2, 2005; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on the condition that a landscape buffer, and the entire site, be maintained as described below; and

WHEREAS, the site is located on the west side of Victory Boulevard at the corner formed by Victory Boulevard, Bay Street, and Van Duzer Street, within a C1-2 zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a Taco Bell and Kentucky Fried Chicken fast food restaurant), with a drive-through facility with a ten vehicle capacity reservoir, and 45 accessory parking spaces; and

WHEREAS, on May 2, 1995, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years; and

WHEREAS, on April 16, 2002, the Board granted a five-year extension of term to expire on July 2, 2005; and

WHEREAS, the applicant requests an additional five-year extension of term; and

WHEREAS, the applicant represents that there have not been any complaints concerning the menu's sound board and that it is not audible beyond the boundaries of the site; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term 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 May 2, 1995, 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 July 2, 2005, *on condition* that that all work shall substantially conform to drawings filed with this application and marked "Received March 24, 2006"–(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 2, 2010;

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

THAT landscaping shall be maintained, including all trees on the approved plans;

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

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

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

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

(DOB App. No. 500972065)

Adopted by the Board of Standards and Appeals, September 12, 2006.

212-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located partially within the bed of a mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-32 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 2, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Department of Buildings Application Nos. 401623169 and 401623711 which read, in pertinent part:

> "Pursuant to AC § 27-197, the Department may revoke a permit for failure to comply with the provisions of the AC, other applicable law or regulation, or a false statement or misrepresentation of material fact in the application accompanying plans and papers upon the basis of which the permit was issued, or whenever any permits were issued, or whenever any permit has been issued in error. Failed audit as per OPPN 1-04."; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to closure and decision on September 12, 2006; and

WHEREAS, this application seeks to amend the Board's previous granted resolution, dated October 23, 2003, which

allowed two, single-family homes to be built in the bed of mapped street; and

WHEREAS, the amendments are necessary to reflect the current location of the homes contrary to the Board's previously approved plans; and

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

WHEREAS, by letter dated August 4, 2006, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated July 9, 2006, the Department of Transportation states that it has reviewed the above project and has no objections to the proposed dwellings located approximately 55 feet from the existing easterly curb line of Hook Creek Boulevard; 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 March 24, 2006, acting on Application Nos. 401623169 and 401623711 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

213-03-A

APPLICANT – Eric Palatnik, P.C. for Excel Development Group, Incorporated, owner.

SUBJECT – Application April 4, 2006 – Application to reopen and amend a previously granted waiver under Section 35 of the General City Law that allowed the construction of a single family dwelling located within the bed of mapped street (Hook Creek Boulevard). The application seeks to retain the current location of the dwelling which was built contrary to a BSA issued resolution and approved plans.

PREMISES AFFECTED – 129-36 Hook Creek Boulevard, East side, between 129th Road and 130th Avenue, Block 12891, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 24, 2006, acting on Department of Buildings Application Nos. 401623169 and 401623711 which read, in pertinent part:

> "Pursuant to AC § 27-197, the Department may revoke a permit for failure to comply with the provisions of the AC, other applicable law or regulation, or a false statement or misrepresentation of material fact in the application accompanying plans and papers upon the basis of which the permit was issued, or whenever any permits were issued, or whenever any permit has been issued in error. Failed audit as per OPPN 1-04."; and

WHEREAS, a public hearing was held on this application on August 8, 2006, after due notice by publication in the *City Record*, and then to closure and decision on September 12, 2006; and

WHEREAS, this application seeks to amend the Board's previous granted resolution, dated October 23, 2003, which allowed two, single-family homes to be built in the bed of mapped street; and

WHEREAS, the amendments are necessary to reflect the current location of the homes contrary to the Board's previously approved plans; and

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

WHEREAS, by letter dated August 4, 2006, the Department of Environmental Protection states that it has reviewed the project and has no objections; and

WHEREAS, by letter dated July 9, 2006, the Department of Transportation states that it has reviewed the above project and has no objections to the proposed dwellings located approximately 55 feet from the existing easterly curb line of Hook Creek Boulevard; 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 March 24, 2006, acting on Application Nos. 401623169 and 401623711 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that

all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

341-43-BZ

APPLICANT – Martyn & Don Weston, for 3319 Holding Corp., owner.

SUBJECT – Application June 8, 2006 – Extension of Term/Amendment filed pursuant to ZR §§11-411 & 11-412, to permit the continuance of a storage warehouse (UG 16) in a C8-2 & R5 zoning district for an additional 10 years. The application also seeks an amendment for the removal of an internal partition and the change from a chain link enclosure to a masonry enclosure of the accessory parking area.

PREMISES AFFECTED – 3319 Atlantic Avenue, northeast corner Euclid Avenue, Block 4145, Lots 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

595-44-BZ, Vol. II

APPLICANT – Law Office of Howard Goldman, for Cinzia 30 CPS, Inc.

SUBJECT – Application July 7, 2006 – Pursuant to ZR 11-413 to permit the change of use on the entire 15th floor (Penthouse) from UG12 Restaurant to a UG6 Office Space. Floors one thru fourteen are a UG6 non-resident doctors' offices. The premise is located in R-10H zoning district.

PREMISES AFFECTED – 30 Central Park South, south side of street, 320' east of Avenue of the Americas, Block 1274, Lot 1055, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Emily Simons and other.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

866-49-BZ, Vol. III

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

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

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

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

558-51-BZ

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

SUBJECT – Application April 19, 2006 - pursuant to ZR§11-411 to extend the term of a Automotive Service Station expiring December 21, 2006. The application does not seek any physical changes from the previous approval.

PREMISES AFFECTED – 68-22 Northern Boulevard, southwest corner of Northern Boulevard and 69th Street, Block 1186, Lot 19, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

182-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2465 Broadway Associates, owner; Equinox 92nd Street, Inc., lessee.

SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar, first and second floors of a commercial building. This is a companion case to 183-95-BZ. The special permit expired on October 1, 2005.

PREMISES AFFECTED – 2465/73 Broadway, west Broadway, 50' south of intersection with 92nd Street, Block 1239, Lot 52, Borough of Manhattan.
COMMUNITY BOARD #7M
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

183-95-BZ
APPLICANT – Rothkrug Rothkrug & Spector, for Haymes Broadway, LLC, owner; Equinox 92nd Street, Inc., lessee.
SUBJECT – Application February 21, 2006 – Pursuant to ZR §73-11 to reopen and amend the resolution for the Extension of Term of a Physical Culture Establishment (Equinox) in the cellar of a commercial building. This is a companion case to 182-95-BZ. The special permit expired on October 1, 2005.
PREMISES AFFECTED – 2473/5 Broadway, southwest corner of Broadway, and West 92nd Street, Block 1239, Lot 55, Borough of Manhattan.
COMMUNITY BOARD #7M
APPEARANCES –
For Applicant: Adam Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
ACTION OF THE BOARD – Laid over to September 26, 2006, at 10 A.M., for decision, hearing closed.

23-04-BZ
APPLICANT – Moshe M. Friedman, P.E., for Yossi Kraus, owner.
SUBJECT – Application July 19, 2006 – Pursuant to ZR 73-11 & 73-622 this application is for an amendment to a previously granted Special Permit for the enlargement of a single family home for the proposed increase in floor area from .62 to 1.002 (+1,141.6 sq.ft.). The proposed plans are contrary to ZR 23-141(a) -floor area, open space; 23-48 - minimum side yard and 23-47-minimum rear yard. The premise is located in an R2 zoning district.
PREMISES AFFECTED – 1150 East 23rd Street, west side, Block 7622, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Moshe Friedman.
ACTION OF THE BOARD – Laid over to November 14, 2006, at 10 A.M., for continued hearing.

APPEALS CALENDAR

346-05-A
APPLICANT – Joseph A. Sherry, for Abdo Alkaifi, owner.
SUBJECT – Application December 6, 2005 – Application to permit an enlargement of a commercial structure located partially in the bed of a mapped street (Beach 52nd Street) contrary to Section 35 of the General City Law. Premises is located within the C8-1 Zoning district.
PREMISES AFFECTED – 51-17 Rockaway Beach Boulevard, S/S 0' East of Beach 52nd Street, Block 15857, Lot 1, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Loretta Papa.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated November 17, 2005, acting on Department of Buildings Application No. 402191310, reads, in pertinent part:

"A1- The proposed enlargement is on a site partially located in the bed of mapped street therefore no permit or Certificate of Occupancy can be issued as per Art 3, Sect 35 of the General City Law"; and

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

WHEREAS, the subject site fronts on Rockaway Beach Boulevard, and extends into a portion of Beach 52nd Street, which runs perpendicular to the Boulevard; and

WHEREAS, Beach 52nd Street dead ends at Rockaway Freeway where it is interrupted and then starts again on the other side of the freeway; and

WHEREAS, the proposed enlargement of the building at the site will increase the encroachment into Beach 52nd Street; and

WHEREAS, by letter dated April 27, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 22, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, the Department of Transportation (DOT), in a letter dated July 3, 2006, stated that it reviewed the application and concluded that the proposed development will prevent

Beach 52nd Street from being built to AASHTO standard width for additional street capacity to accommodate future traffic generation for two way traffic, as well as for installation of curb parking and a pedestrian sidewalk on both sides of the street; and

WHEREAS, DOT also expressed concern about the lack of provisions for a temporary cul-de-sac to be built prior to the street opening to Edgemere Avenue (which is on the other side of the freeway), and that the proposal would preclude the ability to park on at least one side of the streets; and

WHEREAS, finally, DOT stated that there would be a future "alignment problem"; and

WHEREAS, DOT therefore recommended denial of the application; and

WHEREAS, the applicant, in response, notes the following: (1) that the street will never need to be widened to AASHTO standard width because it will never be connected to the Rockaway Freeway, and thus no traffic increase will ever be generated; (2) that Beach 52nd Street is a dead end street that did not require a cul–de- sac when it was created, that there are other dead ends streets in the area that are configured in the same manner, and that Fire Department has no concerns about the lack of a cul-de-sac; (3) that there are only a few properties fronting on Beach 52nd, and that there is ample parking currently on both sides of the street as well as Rockaway Beach Boulevard and Beach 53rd Street; and (4) that the letter from DOT plainly noted that the improvement of Beach 52nd Street, including a portion of the subject property, was not included in DOT's Capital Improvement Program; and

WHEREAS, the applicant also noted that the existing building is already within the mapped street; and

WHEREAS, finally, the applicant notes that no alignment problem with that portion of Beach 52nd Street across the freeway will occur, since that portion is the same width as the subject portion of Beach 52nd Street; and

WHEREAS, the Board finds that in reviewing the record as well as the photos submitted, the proposed enlargement in the bed of the mapped street is modest and will not create parking deficiencies on Beach 52nd Street; and

WHEREAS, the Board also notes that the Fire Department has not expressed any concerns about access for its equipment in light of the proposal; and

WHEREAS, in sum, the Board agrees with the applicant that none of DOT's concerns have any merit; and

WHEREAS, accordingly, notwithstanding DOT's objections, the Board finds that 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, November 17, 2005, acting on Department of Buildings Application No. 402191310, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 6, 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, September 12, 2006.

353-05-BZY

APPLICANT – Cozen & O'Connor for Emet Veshlom Development, 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 38 unit multiple dwelling and community facility under the prior Zoning R6. New Zoning District is R6B as of November 16, 2005.

PREMISES AFFECTED – 614 7th Avenue, Brooklyn, northwest corner of 7th Avenue and 23rd Street, Block 900, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: ….....0

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

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331, to renew a building permit and extend the time for the completion of the required foundation of a proposed five-story multiple dwelling, filed on behalf of the developer; and

WHEREAS, a public hearing was held on this application on March 29, 2006 after due notice by publication in *The City Record*, with continued hearings on April 25 and June 6, 2006; on June 6, the matter was set for decision; and

WHEREAS, on July 18, 2006 the matter was reopened for a further hearing on August 15, 2006, on which date the matter was again set for decision on September 12, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 7, Brooklyn, opposed the application, stating that the foundation was not complete and that several stop work orders and violations were issued; and

WHEREAS, additionally, the South Park Slope Community Group and the Concerned Citizens of Greenwood

Heights opposed the application, stating that the foundation work was not complete, that work was done after hours, that work was done in an unsafe manner, and that the permit under which performed was done was revoked, and only reissued one day before the rezoning; and

WHEREAS, certain elected officials, including State Senator Velmanette Montgomery, State Assemblyman James Brennan, Public Advocate Betsy Gotbaum, and City Council members Sara M. Gonzalez and Bill de Blasio, also provided testimony in opposition to the application; and

WHEREAS, the Board notes that some of the testimony provided by the above individuals and entities related directly to the application; and

WHEREAS, some of the opposition testimony, however, reflected a general objection to any development on the site that does not comply with the new zoning district parameters (discussed below), or that interferes with the vista in Greenwood Cemetery of the Minerva statue and its alignment with the Statue of Liberty; and

WHEREAS, the Board understands that many community residents were particularly concerned about the size of the proposed building, and with the potential interference with the vista; and

WHEREAS, while testimony that reflected this sentiment was accepted into the record, the Board's determination as reflected herein is guided by applicable legal principles, and was based on consideration of the legal claims made by the applicant as well as arguments made by the Department of Buildings (DOB); and

WHEREAS, the subject site is located on the northwest corner of 7th Avenue and 23rd Street; and

WHEREAS, the subject site has a total lot area of approximately 10,016 sq. ft.; and

WHEREAS, the site is proposed to be developed with a five-story, 38-unit multiple dwelling (hereinafter, the "Proposed Development"); and

WHEREAS, on August 3, 2005, pursuant to DOB's professional certification program, the developer pre-filed an application for a New Building permit, under Application No. 301984191-01-NB, for the Proposed Development; and

WHEREAS, New Building Permit No. 301791318-01-NB (hereinafter, the "NB Permit") was subsequently obtained by the developer on August 31, 2005, and work commenced shortly thereafter; and

WHEREAS, as discussed in greater detail below, DOB states that the NB Permit was obtained based upon a set of plans with a perforation date of August 30, 2005; and

WHEREAS, the applicant states that excavation commenced on September 19, 2005, and that concrete was first poured and concrete blocking was first installed on September 22, 2005; and

WHEREAS, on October 5, 2005, DOB initiated a special audit review of the NB Permit (the "Audit"), and certain zoning and Building Code objections were raised; and

WHEREAS, the specific audit objections concern ZR requirements related to floor area, lot coverage, height and setback, and inner courts, and Building Code requirements related to sprinklers, construction classification, and exit passageways (hereinafter, the "Objections"); and

WHEREAS, on October 11, 2005, subsequent to the Audit, DOB issued a letter to the developer and the project architect providing notice of its intent to revoke the NB Permit based on the Objections (the "Notice of Intent"); a stop work order (the "October 11 SWO") was also issued on this date; and

WHEREAS, the applicant states that as of October 11, 2005, approximately 86 percent of the concrete blocking and cement work has been performed; and

WHEREAS, DOB notes that the NB Permit was formally revoked on November 3, 2005 (the "Revocation"), because the applicant did not provide a response to the Objections that precipitated the Notice of Intent; and

WHEREAS, the applicant represents that work resumed on November 10, 2005, the day on which a response to the Audit was finally submitted to DOB by the applicant; and

WHEREAS, the applicant states that this response was allegedly conditionally accepted by DOB on November 10, and the developer believed that work could resume; and

WHEREAS, however, DOB disputes that the October 11 SWO was lifted on November 10; and

WHEREAS, DOB notes instead that on November 15, 2005, under the same DOB application number, the NB Permit was reissued, as evidenced by a letter from the Deputy Borough Commissioner of DOB's Brooklyn office (the "November 15 Letter"); and

WHEREAS, DOB states that and the conditional audit acceptance was not formalized until November 15, 2005 and that the October 11 SWO was in effect until then; and

WHEREAS, the applicant states that no work was performed on November 15, 2005; and

WHEREAS, when construction commenced, the site was within an R6 zoning district; and

WHEREAS, the Proposed Development complied with the R6 zoning in terms of height and floor area; and

WHEREAS, however, as noted above, on November 16, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Park Slope South rezoning proposal, which changed the site's zoning from R6 to R6B; and

WHEREAS, the Proposed Development would not comply with the new R6B district provisions concerning height and floor area; and

WHEREAS, specifically, the Proposed Development has a height of 68 feet (50 feet is the maximum permitted in the R6B zoning district) and an FAR of 3.0 (2.0 is the maximum permitted); and

WHEREAS, because the Proposed Development violates these provisions of the R6B zoning and work on the required foundation was not completed by the Rezoning Date, the reinstated permit lapsed by operation of law; and

WHEREAS, the developer of the Proposed Development now applies to the Board to renew the NB Permit pursuant to ZR § 11-331, so that the Proposed Development may be fully constructed under the prior R6 zoning; and

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

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

WHEREAS, the Board notes that the central issue in this case is whether the NB Permit satisfies the requirements of ZR § 11-31(a); and

WHEREAS, in a submission dated March 28, 2006, DOB stated that its position was that the reissued permit lapsed by operation of law on the Rezoning Date; and

WHEREAS, in its second submission, dated April 11, 2006, DOB stated that because the October 11 SWO was not formally lifted until November 15, 2005, the Board should not consider work performed from November 10 until November 15; and

WHEREAS, in a submission dated May 9, 2006, DOB states that the NB Permit as obtained on August 31, 2005 was invalid and properly revoked, given that that the plans on which it was based presented the ZR and Building Code non-compliances referenced above; and

WHEREAS, DOB asked that the Board not consider any work performed under the NB Permit, but only consider that work performed after the reissued permit was obtained on November 15, 2005; and

WHEREAS, DOB states that a reissued permit "should be considered a new permit for vesting purposes lest an applicant benefit from work retroactively legitimized in error"; and

WHEREAS, DOB also indicates in its May 9 submission that it was auditing the plans on which the reissued permit was based; and

WHEREAS, in its final submission, dated July 13, 2006, DOB reports that this second audit revealed that the plans upon which the reissued permit was obtained were acceptable, but maintains its position that the professionally certified NB Permit was not valid upon issuance on August 31, 2005 and properly revoked; and

WHEREAS, DOB also states that the work performed under the NB Permit, from around August 31 to October 10, 2005, should not be considered by the Board during its assessment of whether excavation was complete and substantial progress was made on foundations; and

WHEREAS, DOB notes in its July 13 submission that pursuant to ZR § 11-31(a), a lawfully issued permit must be based on an approved application showing "complete plans and specifications"; and

WHEREAS, DOB states that it would undermine its professional certification program to allow work performed under an invalid professionally certified permit to be considered in applications under ZR § 11-331, and that it would invite developers to make poor filings in order to commence work as soon as possible and finish foundation construction prior to a rezoning; and

WHEREAS, leaving aside these policy concerns, the Board concurs with DOB's position that work performed under the NB Permit from the time that it was obtained until the October 11 SWO should not be considered in this application; and

WHEREAS, the Board notes that ZR § 11-31(a) provides that questions about the validity of a new building permit that arise during a ZR § 11-331 application shall be resolved by the Commissioner of DOB; and

WHEREAS, here, DOB audited the professionally certified NB Permit and concluded that it was so defective that the Notice of Intent was issued, and later, after no response was received from the developer or the developer's representatives, that it should be revoked in its entirety; and

WHEREAS, in sum, since the NB Permit was invalid when obtained through professional certification and was revoked subsequent to the Audit, and since the reissued permit was obtained on November 15, 2005, one day prior to the Rezoning Date, the Board can only consider construction done thereafter; and

WHEREAS, as noted above, the applicant states that no work was performed on November 15, 2005; and

WHEREAS, thus, the excavation and foundation work performed by the applicant was completed without a lawful building permit in place; and

WHEREAS, since ZR § 11-311 requires that such work be undertaken pursuant to a lawfully issued permit, the instant application must be denied; and

WHEREAS, the applicant makes numerous arguments as

to why DOB's position should not be relied upon by the Board: (1) the Audit and Objections, and consequently, the Revocation, are defective because the DOB auditor reviewed an allegedly outdated set of plans; (2) the Revocation was improper in that it was contrary to what the applicant believes is DOB's normal practice; (3) DOB has previously stated that deficiencies in the plans underlying a building permit can be cured prior to a rezoning without any penalty to the developer in a ZR § 11-331 application; (4) the October 11, 2005 SWO was improperly issued, in direct contradiction to the Building Code and DOB policy; (5) that none of the Objections relate to excavation or foundation work; (6) DOB only changed its position based upon political criticism and press coverage; (7) DOB has a history of making errors and that the Board should not credit its version of events; and (8) the policy considerations concerning professional certification and the incentive to "beat the clock" are inappropriate bases for DOB's position as to the validity of the NB Permit; and

WHEREAS, as to the argument that the DOB auditor reviewed the wrong set of plans, the applicant initially stated that the actual DOB approved plans that should have been reviewed were dated September 1, 2005, and presumably would not have resulted in the Objections, the October 11 SWO or the Revocation; and

WHEREAS, late in the hearing process, the applicant submitted to the Board what appears to be the September 1 set of plans; these plans are perforated "Approved 09 01 2005 DOB BKLYN" and stamped "Approved Per OPPN #5/02 Professional Certification Brooklyn 3B"; and

WHEREAS, the Board conducted a hearing where both the applicant and DOB discussed the relevance of these September 1 plans; and

WHEREAS, at this hearing, DOB explained to the Board that it had no official record of the September 1 plans, and that they should not be considered the approved record set; and

WHEREAS, in a submission dated August 22, 2006, DOB elaborated on this explanation, stating that it reviewed the September 1 plans on a preliminary basis, and concluded that the zoning calculations reflected in this set of plans is sufficiently changed from the August 30 plans that the filing of what is known as a Post-Approval Amendment ("PAA") was required; and

WHEREAS, according to DOB, the processing of a PAA involves more than just the perforation and stamping of plans; in addition, a fee must be paid, the PAA form must be professionally certified, other forms must be amended and submitted, and the amended set of plans must be microfilmed and placed in the job folder; and

WHEREAS, DOB states, and the applicant does not dispute, that no PAA was filed in conjunction with the September 1 plans; and

WHEREAS, DOB states that aside from perforation of purported new plans, none of the other steps were taken; and

WHEREAS, DOB states that it has no microfilm record of the September 1 plans, nor were they in the job file; and

WHEREAS, in sum, DOB concludes that the September 1 plans were never accepted as the new record plans, superseding the August 30 plans, and that the Audit and Revocation were proper; and

WHEREAS, the applicant, in a submission dated September 5, 2006, states that the August 30 plans are not the official plans that should have been audited; and

WHEREAS, the applicant's contends that the August 30 plans were only filed at the pre-filing stage and were prepared before the redesign of the building (which is reflected in the September 1 plans); and

WHEREAS, the applicant theorizes that the September 1 plans were actually the plans that were submitted in conjunction with the obtainment of the NB Permit, and that the perforation took place one to two days later; and

WHEREAS, the applicant suggests that the date discrepancy reflects nothing more than a delay in the perforation due to the high volume of work in the Brooklyn office of DOB; and

WHEREAS, under this theory, the applicant suggests that no PAA was necessary, because the issuance of the NB Permit was based upon the September 1 plans; and

WHEREAS, the applicant attempts to support this theory by noting the following: (1) the August 30 plans were on 11 by 17 inch paper, and thus were too small to be the record set; (2) the actual record set is also never put in the job folder, but is kept as a rolled set in a different area of DOB's borough office; and (3) the perforation and the stamp were placed on the September 1 plans by a DOB employee, and they therefore constitute DOB-approved documents; and

WHEREAS, the applicant's alternative argument is that even if the September 1 plans were brought to DOB after the issuance of the Permit, the failure to comply with the PAA requirements is nothing more than a clerical error; and

WHEREAS, the applicant characterizes the PAA form as the equivalent of a "cover letter"; and

WHEREAS, in support of these arguments, the applicant submitted an affidavit from the project architect and from an expediter who states that he has experience in DOB filing procedure; and

WHEREAS, the architect states that the building was redesigned and new plans were completed on or about August 23, 2005 and that the redesign was reflected in the September 1 plans; and

WHEREAS, the architect claims that his office contacted DOB when the Audit was initiated, and at a subsequent meeting, the DOB auditor was informed that the wrong plans were being reviewed; and

WHEREAS, the expediter states that, based upon his knowledge of DOB generally, approved plans are not located in the job folder, but are "stored separately from the physical files"; and

WHEREAS, the expediter also states that perforation is done by a clerk, and that plans may not be perforated until a few days later after they are submitted; and

WHEREAS, the Board has reviewed the submissions of both DOB and the applicant; and

WHEREAS, at the outset, the Board notes that the argument that DOB audited the incorrect set of plans was made for the first time by the applicant during the course of the hearing process; and

WHEREAS, the Board observes that the applicant's argument is an appeal of the Revocation, DOB's determination that the deficiencies revealed in the Audit provided a sufficient basis for the Revocation of the NB Permit; and

WHEREAS, the Revocation was a final determination of DOB; and

WHEREAS, the Board notes that while it has jurisdiction over appeals from such final determinations, no such appeal was taken within thirty days of the date of the decision, as required by the City Charter and the Board's Rules of Practice and Procedure, even though the project architect conceded in his most recent affidavit that his office believed that DOB was reviewing the incorrect plans when the Audit was in process; and

WHEREAS, this argument is time-barred, because an appeal of the Revocation must have been filed with the Board within 30 days of its issuance by DOB, not close to nine months later in the context of an application made under ZR § 11-331; and

WHEREAS, however, even assuming *arguendo* that the applicant's argument should be entertained, the Board does not find it persuasive; and

WHEREAS, first, the applicant did not provide any explanation for its contention that record plans are kept in a location besides the job folder at the DOB offices; in fact, no description of this location was offered, aside from the vague assertion that record plans are "stored separately"; and

WHEREAS, in a submission dated July 6, 2006, the Concerned Citizens of Greenwood Heights submitted the 11 by 17 inch set of the August 30 plans – with an August 30, 2005 perforation – and stated that, based upon their review, the set was identical to the microfilmed set of plans on file at DOB; and

WHEREAS, the logical conclusion is that the 11 by 17 set of plans that the audit was based upon is a reduced copy of what was officially offered as the record set when the NB Permit was obtained; and

WHEREAS, therefore, even if the applicant is correct in its assertion that the large set of the record plans are stored somewhere besides in the job folder, this does not mean that the auditor reviewed an incorrect set of plans; and

WHEREAS, second, the Board disagrees that the alleged perforation of the September 1 plans by a DOB employee constitutes an official recognition by DOB of said plans as the record set; and

WHEREAS, DOB explained all of the additional steps that must be undertaken to make an official submission of revised plans, none of which occurred here; and

WHEREAS, DOB does not consider these requirements to be clerical in nature, and the Board agrees that permit applicants at DOB have a fundamental responsibility to ensure that submissions are made according to proper procedure; and

WHEREAS, third, the applicant was unable to provide proof that the September 1 plans were microfilmed, or that a rolled set exists in the unspecified location at the DOB offices; and

WHEREAS, in fact, the Board notes that DOB's Building Information System (BIS) reflects that a microfilming fee was paid on August 31, 2006 (the day the NB Permit was issued); DOB stated at hearing that the microfilm does not reflect the September 1 plans and that the only microfilm available is of the August 30 plans; and

WHEREAS, additionally, as noted above, the Concerned Citizens of Greenwood Heights stated that it had reviewed the microfilmed plans at DOB, and that the microfilm reflects the August 30 plans; and

WHEREAS, the Board finds the contention that the August 30 plans were not the plans upon which the NB Permit was based to be illogical in light of the fact that they were microfilmed on the date the NB Permit was obtained and a fee for microfilming was paid; and

WHEREAS, the Board observes that there would be no reason to have the August 30 plans perforated and then microfilmed if the September 1 plans were to be the plans of record; and

WHEREAS, finally, the project architect, in his most recent affidavit, states that his office cannot verify that the September 1 plans were in fact filed with DOB on August 31, 2005; and

WHEREAS, the architect states "we cannot state to the Board precisely what happened at the DOB on the dates of August 31, 2005 and September 1, 2005."; and

WHEREAS, in sum, the Board does not find the applicant's contention that DOB audited the incorrect set of plans, even if properly before the Board, to be credible or supported by any evidence; and

WHEREAS, finally, it must be noted that the applicant failed to submit corroborating evidence in support of the contention that the project architect notified DOB during the Audit that the incorrect plans were being reviewed; and

WHEREAS, neither the applicant nor the architect submitted any documentation, such as a dated letter to DOB, that supports the contention that DOB was put on notice that its auditor was reviewing the incorrect plans; and

WHEREAS, it strains credulity that the developer would fail to aggressively appeal, either at DOB or at the Board, what is contended to be an improper permit revocation when the right to develop under the prior zoning was at stake; and

WHEREAS, moreover, the Board finds it ironic that in its initial papers related to the instant application, no mention of the allegedly faulty Audit was made; and

WHEREAS, in fact, the initial papers do not mention the Revocation at all; and

WHEREAS, instead, the applicant's revised Statement, dated February 10, 2006, merely states that the NB Permit application was initially approved on August 31, 2006 – no mention is made of plans dated September 1, 2005; and

WHEREAS, likewise, in its April 11, 2006 submission, the applicant again makes no mention of any deficiencies in the

Audit or Revocation; and

WHEREAS, a prior affidavit from the project architect, attached to the April 11, 2006 submission, also does not allege that the Audit was in any way improper; and

WHEREAS, the applicant did not allege that the Audit was defective until it June 27, 2006 submission, after DOB expressed its position that work undertaken pursuant to the revoked NB Permit should not count towards a vesting determination; and

WHEREAS, based upon the above, the Board questions whether this argument is made in good faith; and

WHEREAS, as to the second argument noted above (that the Revocation was improper and contrary to DOB's normal practice), the applicant states that it occurred during the middle of a dialog between the developer's representatives and DOB as to how to resolve the Audit, and that a meeting to discuss them was scheduled for November 4, 2005; and

WHEREAS, the applicant states that based on its experience with DOB, it is unusual that a revocation was issued while discussions were apparently initiated; and

WHEREAS, the Board restates its position that any challenge to the Revocation is time-barred; and

WHEREAS, further, the Board finds the applicant's contention irrelevant: even if what transpired is unusual, the applicant does not dispute the factual assertion that there was not a sufficient response to the Notice of Intent; and

WHEREAS, additionally, the applicant has submitted no evidence of the alleged scheduling of the November 4 meeting, and DOB states that it has no record of it; and

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

WHEREAS, as to the third argument (that DOB has previously stated that deficiencies in the plans underlying a building permit can be cured prior to a rezoning without any penalty to the developer in a ZR § 11-331 application), the applicant states that in a comparable application brought under BSA Cal. No. 354-05-BZY, DOB noted on the record that an applicant has the right to amend plans in order to correct ZR and Building Code deficiencies; and

WHEREAS, the applicant notes that in its April 11, 2006 submission on Cal. No. 354-05-BZY, DOB stated that work performed prior to such amendment could still count towards a determination that excavation was complete and substantial progress was made on foundations; and

WHEREAS, in this April 11 submission, DOB states that after an audit revealed potential issues with the building permit in question, a notice of intent to revoke the permit was issued; and

WHEREAS, DOB goes on to state that the developer worked with DOB to resolve the audit, and that it ultimately withdrew the notice of intent, finding that the developer's response sufficiently demonstrated that the permit should not be revoked; and

WHEREAS, DOB also asserted in this submission that the notice of intent was not a determination that the plans and specifications were not complete and that the building permit was not legally issued; and

WHEREAS, DOB concluded that since the permit was never revoked, it was lawfully issued; and

WHEREAS, the Board has reviewed these statements and finds that the applicant's reliance upon them in support of its argument is misplaced: in the instant application, unlike in BSA Cal. No. 354-04-BZY, there was an affirmative DOB determination that the ZR and Building Code non-compliances were fatal to the validity of the permit such that revocation was required; and

WHEREAS, here, since there was a revocation of the NB Permit based upon non-compliance with zoning and Code, a determination that it was not a lawfully issued permit for purposes of a ZR § 11-331 application was appropriately reached; and

WHEREAS, however, in BSA Cal. No. 354-04-BZY, since the developer there worked with DOB to resolve the outstanding objections, there was no revocation, and no opportunity to reach a conclusion that the permit in question did not comply with ZR § 11-31(a); and

WHEREAS, in other words, once a permit is revoked, the available cure of resolving the outstanding objections in order to prevent revocation and a determination of invalidity is foreclosed; the only "cure" is the reinstatement of the permit, which, as stated by DOB, is akin to the issuance of a new permit; and

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

WHEREAS, as to the fourth argument (that the October 11 SWO was issued in direct contradiction to the Building Code and DOB policy), the applicant states that had it not been issued, work could have continued to the point of full completion of foundations, such that the instant application would not have been necessary; and

WHEREAS, the applicant states that, pursuant to Building Code § 27-197, SWOs may only be issued when there is an imminent peril to life or property; and

WHEREAS, the applicant also argues that DOB's Operational Policy and Procedure Notice #2/04 (the "PPN") provides that a SWO can only be issued with a notice of intent to revoke a permit when the reason for possible revocation presents an imminent peril to life or property; and

WHEREAS, the applicant states none of the ZR and Building Code provisions cited in the Objections, if violated, would represent an imminent peril to life or property; and

WHEREAS, first, the Board notes that the instant application is not an appeal challenging the authority of DOB to issue the October 11 SWO; and

WHEREAS, like the Revocation, had the developer wished to pursue such an appeal, it should have been filed at the Board within 30 days of its issuance; and

WHEREAS, further, the Board notes that DOB's authority to issue a stop work order is derived from Building Code § 26-118, which provides, in sum and substance, that an order to stop work may be issued at any time when it is found that building work is being executed in violation of the provisions of any law

rule or regulation enforceable by DOB; and

WHEREAS, this broad grant of authority does not depend upon a finding that work represents an imminent peril to life or property; and

WHEREAS, Building Code § 27-197 actually refers to immediate suspension of a permit, which is a distinct action from an order to stop work; and

WHEREAS, further, the Board finds that the PPN does not limit DOB's ability to proceed under Building Code § 26-118; rather, it merely references a form of letter that may be used if it is determined that the reasons for revocation present peril; and

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

WHEREAS, as to the fifth argument (that none of the Objections relate to excavation or foundation construction), the Board notes that ZR § 11-31(a) specifically provides that a lawfully issued permit is one based on plans showing the entire proposed development, and not a portion thereof; and

WHEREAS, any non-compliance reflected in the plans, regardless of the section of the building depicted, is relevant as to ZR § 11-31(a); and

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

WHEREAS, as to the sixth argument (that DOB only changed its position based upon political criticism and press coverage), the applicant notes that this change arose around the same time that there was allegedly negative press coverage and criticism of DOB from elected officials; and

WHEREAS, however, even if there was a proven correlation in time between the alleged negative press coverage/criticism and DOB's change in position, the Board observes that any conclusions about causation are, at best, unsubstantiated speculation; and

WHEREAS, the Board further observes that like any party to a public hearing process that extends over numerous hearings, with multiple submissions and many complicated issues, DOB is entitled to refine or modify its position; and

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

WHEREAS, as to the seventh argument (that DOB has a history of making errors and that the Board should not credit its version of events), the applicant cites to an erroneous revocation of the reissued permit, which allegedly occurred on June 5, 2006; and

WHEREAS, the applicant states that this is an example of how easily miscommunication can occur at DOB, and suggests that the developer should not be penalized because the Revocation was issued one day prior to a scheduled November 4 meeting to discuss the Objections; and

WHEREAS, the applicant did not provide any evidence of this alleged erroneous revocation into the record; and

WHEREAS, however, even if it did occur, the Board would not find it significant; and

WHEREAS, as noted above, there is no evidence that a meeting was scheduled for November 4, 2005; and

WHEREAS, further, there is nothing in the record to suggest that that the Revocation was issued in error or reflected a lack of communication at DOB; and

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

WHEREAS, as to the eighth argument (that the policy considerations concerning professional certification and the incentive to commence work as soon as possible are inappropriate bases for DOB's position as to the NB Permit), the applicant notes that professional certification results in a permit with the same legal status as a permit that is issued after DOB plan examination, and that there was no effort to beat the clock here, as evidenced by the fact that original plans were allegedly drafted in 2004 and demolition of the improvements that formerly occupied the site occurred in April of 2005; and

WHEREAS, however, as stated above, the Board does not concur with DOB's position because it is concerned about the integrity of the professional certification program or incentives to commence work improperly, though these are obviously legitimate considerations; and

WHEREAS, rather, the Board bases its concurrence on its reading of the plain language ZR § 11-31(a), which requires that a lawfully issued building permit be based on complete plans and specifications, and otherwise be approvable, as determined by the Commissioner of Buildings; and

WHEREAS, the NB Permit does not meet this test, as evidenced by the Objections and the failure to cure the objections prior to the Revocation; and

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

WHEREAS, in sum, the Board finds: (1) that the NB Permit, when obtained by the developer through professional certification, was not based on complete plans and specifications, was not approvable, and was invalid; (2) that the Board can properly exclude from its consideration the work performed under the NB Permit from the time it was pulled until the issuance of the October 11 SWO; and (3) that none of the applicant's arguments to the contrary are persuasive; and

WHEREAS, thus, because all excavation and foundation work was performed under an invalid permit, which is impermissible as per ZR § 11-331, the Board concludes that the application must be denied.

Therefore it is Resolved that this application to renew DOB Permit No. 301984191-01-NB pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, September 12, 2006.

356-05-A & 357-05-A

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

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

zoning district is R3X as of September 15, 2005.
PREMISES AFFECTED – 150 and 152 Beach 4th Street a/k/a 1-70 Beach 4th Street, south of Seagirt Avenue, Block 15607, Lot 62 and 63, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Lyra Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete two proposed semi-detached two-family dwellings under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on June 20, 2006, after due notice by publication in *The City Record*, with continued hearings on July 18, 2006 and August 22, 2006, and then to decision on September 12, 2006; and

WHEREAS, the site was inspected by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

WHEREAS, Community Board 14, Queens, recommends disapproval of this application; and

WHEREAS, the Neighbors of Mott Creek Civic Association and certain neighbors also provided testimony in opposition to the application, citing concerns about the level of completion of work and expenditures and the preservation of neighborhood character; and

WHEREAS, further, City Council Member Tony Avella provided testimony in opposition to the application, citing concerns that the foundations are not complete and about construction methods; and

WHEREAS, the applicant states that the subject premises consists of two adjacent 3,000 sq. ft. lots with frontage on Beach 4th Street, south of Seagirt Avenue; and

WHEREAS, the applicant proposes to develop the site with two semi-detached two and a half-story with cellar residential buildings, with one dwelling of 3,248.08 sq. ft. of floor area and the other with 1,920.2 sq. ft. of floor area (hereinafter, the "Buildings"); and

WHEREAS, the site was formerly located within an R5 zoning district; and

WHEREAS, the Buildings comply with the former R5 zoning district parameters; and

WHEREAS, however, on September 15, 2005 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Far Rockaway and Mott Creek Rezoning, which rezoned the site to R3X; and

WHEREAS, the Buildings do not comply with the R3X zoning district parameters as to use, dwelling unit count, lot size, FAR, building height, side yards, and perimeter wall height; and

WHEREAS, specifically, as to use, R3X zoning district regulations permit two-family homes, but semi-attached homes, like those proposed, are not permitted; and

WHEREAS, further, the number of dwelling units permitted is determined by a designated dwelling unit factor; under this factor, only two dwelling units would be permitted, rather than the total of four proposed; and

WHEREAS, as to lot size, the two lots are each 30 ft. wide with 3,000 sq. ft. of lot area; R3X zoning regulations require a minimum lot width of 35 ft. and a minimum lot size of 3,325 sq. ft.; and

WHEREAS, as to FAR, the proposed FAR is 1.11; the maximum permitted in the new R3X zoning district is 0.5; and

WHEREAS, the zoning change also results in non-compliances with respect to the total height and perimeter wall height; and

WHEREAS, specifically, the Buildings provide a street wall of 30 ft. and a total height of 40 ft.; R3X zoning district regulations permit a perimeter wall height of 21 ft. and a total height of 35 ft.; and

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

WHEREAS, the record indicates that the following permits were lawfully issued to the owner by DOB prior to the Enactment Date, on August 19, 2005: Permit Nos. 402189038-01 and 402189047-01 (hereinafter, the "New Building Permits"); and

WHEREAS, the opposition contested the validity of the New Building Permits, raising the concern that different address numbers appear at different times on the DOB documents (including the permits) associated with the development; and

WHEREAS, at hearing, the applicant explained that the discrepancy in the addresses is due to an error by the Queens Borough President's Topographical Bureau House Number Division; and

WHEREAS, DOB also submitted a letter confirming that the address error had been made by the Topographical Division and that the permits were validly issued to the subject premises, notwithstanding this error; and

WHEREAS, the Board accepts that the permits were validly issued by DOB to the owner of the subject premises; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under it, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

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

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

WHEREAS, as to substantial construction, the applicant states that the owner has completed excavation, poured 73 percent of the concrete, and driven all of the piles; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of each lot showing the amount of work completed; affidavits from the project manager, indicating the amount of work completed; and copies of pour tickets and cancelled checks; and

WHEREAS, the applicant has also submitted plans reflecting the degree of work completed; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, specifically, the Board considered that, as of the Enactment Date, excavation for both buildings had been completed; all piles were installed; the foundation for the larger building had been poured; and 80 out of 110 total yards of concrete had been poured over the entire site; and

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

WHEREAS, specifically, the Board has reviewed the cases cited in the opposition's July 18, 2006 and August 22, 2006 submissions and the applicant's August 8, 2006 submission, as well as other cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

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

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of $184,919.39 out of $650,500.00 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted pour tickets for foundation work, cancelled checks, and an accounting report; and

WHEREAS, the Board considers the amount of expenditures significant, both in of itself for a project of this size, and when compared against the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of $184,919.39 that would result if vesting were not permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the diminution in income that would occur if the dwelling number, lot size, FAR, building height, and side yard limitations of the new zoning were imposed; and

WHEREAS, specifically, the applicant notes that the permissible Floor Area Ratio (FAR) would decrease from 1.25 FAR to 0.5 FAR, but more importantly, because of the inability to develop two-family semi-detached homes, the rezoning would require the owner to clear the site, completely re-design the development and re-pour the foundations; and

WHEREAS, the Board agrees that the need to redesign, coupled with $184,919.39 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

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

WHEREAS, specifically, the opposition contended that: (1) the foundation was not complete; (2) the percentage of foundation work was not sufficient to sustain a positive vesting determination; (3) substantial expenditures had not been made or substantiated; (4) work was done prior to permitting; and (5) work was completed while a stop-work order from DOB was in effect; and

WHEREAS, the Board notes that there is no requirement under the common law of vested rights that the foundations under consideration be completed; and

WHEREAS, as to the amount of foundation work performed, the Board reiterates that the degree of construction at the site was substantial enough to meet the guideposts established by case law for such a finding; and

WHEREAS, as to expenditure, the opposition contends that the applicant had not shown that the expenditures made were substantial in relation to the total expected cost of construction; and

WHEREAS, as discussed above, the applicant states that the total anticipated cost of the project is $650,500.00, including soft costs such as architectural costs, but not costs associated with the purchase; and

WHEREAS, also as discussed above, the Board notes that the applicant submitted pour tickets, cancelled checks, and an accounting report documenting expenditures; and

WHEREAS, as to impermissible work, the Board

observes that no evidence of such work was submitted into the record; and

WHEREAS, the Board notes that work continued after the change in zoning, but the Board only considered work performed prior to the Enactment Date and costs associated with that work; and

WHEREAS, the Board also notes that DOB confirmed that there were no violations issued related to the work at the site; and

WHEREAS, finally, the opposition states that DOB issued an intent to revoke the New Building Permits on September 6, 2005, and submitted a photograph of what appears to be a stop-work order issued to 1-68 Beach 4th Street (the site's original address) on September 6, 2005 and posted at the site; and

WHEREAS, however, the Board notes that no copy of such a stop-work order was ever submitted into the record; and

WHEREAS, additionally, DOB states that it has no record of a stop-work order being issued to the site on September 6, or at any time prior to the Enactment Date; and

WHEREAS, while the Board was not persuaded by any of the opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Far Rockaway and Mott Creek Rezoning and that the Buildings do not comply with the new R3X zoning parameters; and

WHEREAS, however, the owner has met the test for a common law vested rights determination, and the owner's property rights may not be negated merely because of general community opposition; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 402189038-01 and 402189047-01, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 12, 2006.

12-06-A

APPLICANT – Stuart A. Klein, Esq., for Carl F. Mattone, owner.

SUBJECT – Application January 23, 2006 – Appeal seeking a reconsideration of Department of Buildings refusal to revoke permits for a single family home which allowed numerous violations of the Zoning Resolution required side yards, waterfronts yards, and bulk regulations. Premises is located within R1-2 Zoning District.

PREMISES AFFECTED – 37-19 Regatta Place, bounded by Bay Street and the Little Neck Bay, Block 8071, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION:

WHEREAS, the instant appeal, brought by a neighbor to the premises (at 37-25 Regatta Place, Lot 30), comes before the Board in response to a final determination of the Queens Borough Commissioner, dated December 23, 2005 (the "Final Determination"); and

WHEREAS, the Final Determination was issued in response to a November 9, 2005 request from the appellant seeking a reconsideration from DOB as to its refusal to revoke the permit issued in connection with DOB Application No. 401846277 (hereinafter, the "Permit") for construction of a single-family home (the "Building") at the subject premises; and

WHEREAS, the Final Determination reads, in pertinent part:

> "This is in reply to your letter dated November 9, 2005 regarding the above referenced property for which you raised a number of zoning objections.
>
> The application in question was re-examined and the following are the findings:
>
> 1) The construction at the premises meets the minimum FAR and Lot coverage for a single-family residential building in this district. See ZR 62-322. The Final Survey prepared by Barrett, Bonacci & Van Weele, P.C., licensed surveyors, established that the lot landward of the man high water line is 10,756 square feet. The FAR is less than .50 and meets the requirements of ZR 62-122. In this case, where there is no bulkhead line or pierhead line, the shoreline determines the location of the upland lot. See ZR 62-11 (definitions of upland lot and waterfront zoning lot) and ZR 62-31. As per ZR 12-10 definition of shoreline, the shoreline is the mean high water line and in determining the mean high water line, the licensed surveyor followed National Oceanic and Atmospheric administration of the U.S. Department of Commerce ("NOAA") procedures. See Final Survey, Note 2 reflecting compliance with the NOAA procedures.
> 2) The rear yard complies with ZR 62-332. There are no pre-existing non-complying conditions. Since there is no pierhead or bulkhead line, there is no bulkhead for the purposes of waterfront zoning. Pursuant to ZR 62-332 the required rear yard is measured from the shoreline as defined by ZR 12-10. See ZR 12-10, which defines the shoreline as the mean

high water line as determined in accordance with NOAA procedures.

3) The premises is a single-family residential use in a residential district and is not a non-conforming use as stated in your letter. It is to be noted that the issue raised about non-complying or non-conforming is not valid since the application is filed as a new building complying with the present zoning requirements regardless of any existing condition. Also, be aware that demolition application #401861491 was filed and signed off on 10/13//04.
4) Since the premises met all the requirements of law, no variance of the zoning provision is required.
5) There is no development on piers or platforms and, therefore, all allegations that the construction is contrary to ZR 62-242 and 62-332, have no basis. ZR 62-332 entitled "Rear Yards and Waterfront Yards" requires a 30-foot waterfront yard, which the instant application complies with. This section does not prohibit the natural grade level of the waterfront yard from being raised. Here the level of the waterfront yard is not higher than the base plane, as defined in ZR 12-10. In addition, open terraces and porches, and a wall not exceeding 4'-0" in height, are permitted obstructions in a waterfront yard for single family detached residence, as per ZR 62-332. Consequently, the open terrace and the wall on the premises, which is less than 4'-0" in height are permitted. Furthermore swimming pools, both in ground and above ground are permitted obstructions when accessory to single family as per ZR 62-332.
6) Your objections pertaining to compliance with Tidal Wetland Regulations should be referred to Department of Environmental Conservation (DEC) for their review.
7) There is no bulkhead line and therefore no bulkhead for purposes of zoning. There is no "stabilized natural shore." The existing private wall on the premises is a retaining wall and is not there to stabilize the natural shore. The records of the Department of Small Business Service (DSBS), the agency empowered to issue waterfront permits, indicates no history of applications on file for shoreline stabilization at this location. See attached letter from DSBS dated December 15, 2005. Since there is no stabilized natural shore or bulkhead and the private wall is simply a privately maintained retaining wall, all of the measurements are correctly taken from the mean high water line as per ZR 62-332. The mean high water line is the shoreline and the proper point at which to measure the waterfront yard.

Finally, I do agree with you about the inaccurate information provided on the initial survey. However, based on information submitted in your letter of July 8, 2005, this office has taken appropriate measures that resulted in the issuance of a stop work order. Upon correction of the zoning calculations and the submission of an accurate survey, this office allowed the construction work to continue."

WHEREAS, as reflected in the Final Determination, the Queens Borough Commissioner denied the appellant's request because all outstanding zoning issues had been resolved and there was no basis to revoke the Permit; and

WHEREAS, accordingly, DOB issued a certificate of occupancy for the Building on January 20, 2006; and

WHEREAS, a public hearing was held on this application on July 18, 2006 after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

WHEREAS, in addition to DOB, the owner of the premises appeared through counsel; and

WHEREAS, State Senator Padavan and certain neighbors provided testimony in support of the appellant, citing concerns about the measurement of the Mean High Water Line ("MHWL") and possible compliance issues with applicable side yard requirements; and

WHEREAS, a neighbor also provided testimony in support of the appellant, citing concerns about the measurement of the MHWL and the side yard requirements; and

WHEREAS, the MHWL is a line of reference that is cited in certain ZR provisions (referenced below) and, as noted in an attachment to DOB's July 11, 2006 submission (a letter from a surveyor, dated December 8, 2005, relied upon by DOB), refers to a "line on a chart or map which represents the intersection of the land with the water surface at the elevation of mean high water"; and

WHEREAS, the premises is located within an R1-2 zoning district, on the north side of Regatta Place, where said street dead ends and is parallel to Little Neck Bay to the north and Bay Street to the south; and

WHEREAS, the Board notes that the site is indicated on zoning map 11a; and

WHEREAS, the Board notes that because the premises abuts Little Neck Bay, it considered part of a waterfront area and a waterfront zoning lot, and is subject to special waterfront regulations set forth in Article VI, Chapter 2 of the ZR; and

WHEREAS, the premises is irregularly shaped: the front lot line (on Regatta Place) is 44.36 feet; the front lot line adjoins another lot line which extends approximately 109 ft. to the northwest, which adjoins another lot line running northeast for approximately 98 ft. (abutting the body of water known as Little Neck Bay), which adjoins a lot line running southeast for approximately 91 ft., which adjoins another lot line which runs southwest for approximately 49 ft., which adjoins a lot line adjoining the front lot line running approximately 41 ft.; and

WHEREAS, the lot lines adjoin at odd angles, resulting in

the site's irregular shape; and

WHEREAS, the site is adjacent to the afore-mentioned neighbor's property; and

WHEREAS, the site has a lot area of 11,801.6 sq. ft., some of which is considered upland, and some of which is considered underwater; and

WHEREAS, ZR § 62-11 provides that an upland lot is "the portion of a waterfront zoning lot located landward of the bulkhead line where a portion of the shoreline projects seaward of the bulkhead line, such land above water shall be included as part of the upland lot"; and

WHEREAS, the Board notes that the Department of City Planning, in its Zoning Handbook, defines bulkhead line as "a line shown on the zoning maps which divides the upland and seaward portions of waterfront zoning lots"; and

WHEREAS, ZR § 11-16 "Pierhead Lines, Bulkhead Lines and Marginal Streets" provides that "in the event a provision of the Resolution refers to a pierhead or a bulkhead line and no such line is shown on the zoning map, then the shoreline shall control."; and

WHEREAS, ZR § 12-10 "shoreline" defines this term as "the [MHWL], as determined in accordance with the procedure set forth by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce" (hereinafter, "NOAA"); and

WHEREAS, based upon documentation submitted by the owner of the premises as to the MHWL, DOB states that the upland lot area is 10,756 sq. ft.; and

WHEREAS, as discussed below, the Board notes that the amount of upland lot area, which is used to calculate floor area and for application of other bulk provisions such as lot coverage, is one of the disputed items in this appeal; and

WHEREAS, in addition to the measurement of upland lot area, the correct measurement of the Building's three chimneys is also at issue in this appeal; and

WHEREAS, because these measurements are contested, five land surveys are part of this record; and

WHEREAS, specifically, the surveys prepared for the owner are dated August 12, 2003 (the "Owner's 2003 Survey") and July 26, 2005 (the "Owner's Final Survey"), both prepared by Baret, Bonacci & Van Weele, P.C.; and

WHEREAS, the appellant cites to a November 18, 1969 survey by Teas and Steinberger (the "1969 Survey"), a July 28, 2006 survey by Rogers Surveying (the "Appellant's First Survey"), and an August 22, 2006 survey relating only to chimney measurement by Arek Surveying Company ("Appellant's Second Survey"); and

WHEREAS, the site is currently improved upon with the Building, a two-story with basement single-family dwelling, with a total floor area of 5,369 sq. ft.; and

WHEREAS, the Board notes that the permitted Floor Area Ratio in the subject zoning district is 0.5; and

WHEREAS, the owner applied for the Permit on April 2, 2004, and submitted the Owner's 2003 Survey with the permit application; and

WHEREAS, on July 23, 2004, DOB issued the Permit and construction commenced; and

WHEREAS, on July 8, 2005, the appellant submitted a letter to DOB protesting the construction and underlying permit, which resulted in the issuance of a stop-work order on July 15, 2005; and

WHEREAS, on October 11, 2005, upon correction of the zoning calculations and the submission of the Owner's Final Survey, DOB allowed construction to continue; and

WHEREAS, on December 23, 2005, DOB issued the Final Determination for purposes of the instant appeal; and

WHEREAS, as noted above, on January 20, 2006, DOB issued a final certificate of occupancy (No. 401846277F) for the Building; and

WHEREAS, the appellant now challenges DOB's Final Determination on the basis that: (1) the upland lot area, and as a result, the permitted floor area, lot coverage, and waterfront yard (this term is defined below) dimensions, was improperly calculated; (2) the waterfront yard is non-compliant as to its elevation in relationship to the Bay; (3) the Building does not comply with rear and side yard requirements; and (4) the chimneys do not comply with applicable permitted obstruction requirements; and

WHEREAS, in support of the first argument, the appellant contends that the upland portion of the subject waterfront zoning lot was improperly calculated in that DOB relied on an incorrect reference point from which to measure the remote upland boundary line; and

WHEREAS, first, the appellant argues that the Owner's 2003 Survey shows that the upland portion of the site is 9,020 sq. ft.; and

WHEREAS, the appellant disputes the calculation of the upland portion of the site as reflected in the Owner's Final Survey, and notes that there is no reasonable explanation for the discrepancy between the two surveys; and

WHEREAS, the appellant contends that if the upland portion of the lot is actually 9,020 sq. ft., this would mean that the Building, with a floor area of 5,369, is non-compliant (as noted above, the permitted FAR in the subject district is 0.5); and

WHEREAS, the appellant also alleges that the lower upland lot area would result in non-complying lot coverage as well; and

WHEREAS, further, the appellant argues that the boundary of the waterfront yard was improperly determined by DOB; and

WHEREAS, ZR § 62-21 "Waterfront yard" defines this term as "that portion of a waterfront zoning lot extending open and unobstructed from the lowest level of the sky along the entire length of the shoreline, stabilized natural shore, bulkhead or water edge of a platform, as applicable, for a depth or width as set forth in [Article VI, Chapter 2]"; and

WHEREAS, pursuant to ZR § 62-332, in an R1-2 zoning district, a waterfront yard must be provided along the entire length of the shoreline, at a depth of 30 feet, measured from the landward edge of the bulkhead, stabilized natural shore or, in the case of natural shorelines, the MHWL; and

WHEREAS, the appellant asserts that there is a wall located at the rear of the subject site along the water, which is closer inland than the line of reference (the MHWL as established by the Owner's Final Survey) used by the property

owner and DOB for purposes of calculating the rear dimension of the waterfront yard; and

WHEREAS, appellant contends that this wall can be defined as either a bulkhead or stabilized natural shore, and that the MHWL should therefore not have been used; and

WHEREAS, in support of this argument, the appellant suggests that this wall should be defined as a bulkhead or stabilized natural shore since it appears to be illustrated on the 1969 Survey; and

WHEREAS, the appellant also suggests that the wall meets the common dictionary definition of a bulkhead; and

WHEREAS, appellant concludes that if the wall is the boundary of the waterfront yard, then said yard does not meet the required minimum depth of 30 ft.; and

WHEREAS, DOB responds that appellant's contentions are unconvincing; and

WHEREAS, first, DOB notes that there is no bulkhead line shown on Zoning Map 11a where the premises is located, which, pursuant to ZR § 11-16 as referenced above, supports the use of the MHWL as the correct measuring point for the upland portion of the lot; and

WHEREAS, based upon the MHWL as reflected in the Owner's Final Survey, DOB concludes that the upland portion of the site is 10,756 sq. ft.; and

WHEREAS, since this upland lot area is the basis for the zoning calculations related to the Permit, DOB concludes that the Building complies with FAR and lot coverage requirements, for a single-family residential building in an R1-2 district;

WHEREAS, as to the waterfront yard issue, DOB notes that the 1969 Survey labels the wall in question as a wall and not as a bulkhead or a stabilized natural shore; and

WHEREAS, additionally, DOB argues that the existing wall is not a stabilized natural shore, as the records of the Department of Small Business Services ("DSBS") showed that no applications were on file for shoreline stabilization at the premises; and

WHEREAS, DOB notes that in the absence of any evidence to the contrary, the wall is appropriately classified as a retaining wall; and

WHEREAS, therefore, DOB concludes that since the wall is neither a bulkhead nor a stabilized natural shore, pursuant to the definition of "waterfront yard", the shoreline is the proper point from which to measure yard's rear dimension; and

WHEREAS, since the shoreline controls, DOB appropriately applied the definition of shoreline in the ZR, as referenced above, which requires a calculation of the MHWL; and

WHEREAS, the Board has reviewed these arguments and agrees with DOB; and

WHEREAS, the Board notes that none of the above-mentioned surveys that reflect the wall label it as a bulkhead or stabilized natural shore; rather, they identify it as a retaining wall or seawall; and

WHEREAS, further, there is no evidence whatsoever to suggest that the retaining wall serves any bulkhead or shoreline erosion purpose; and

WHEREAS, the appellant, in its September 6, 2006 submission, asserts that there is a rip-rap bordering the wall, which constitutes a stabilized natural shore, since it was allegedly placed there to protect against waves and other tidal activity; and

WHEREAS, the Board is troubled by this statement regarding the purported rip-rap, since it contradicts earlier assertions; and

WHEREAS, specifically, the Board notes that in the April 26, 2006 submission, the appellant stated, "No permits or engineering drawings to allow the placement of this rip-rap can be found in any official records for the Subject Premises. By all accounts this alleged rip-rap is nothing more than construction debris illegally dumped by contractors into the Little Neck Bay during the course of the construction of the Subject Premises and hardly qualifies as engineered placement of rocks to act as a wave break."; and

WHEREAS, in a footnote to the statement noted above, the appellant stated that submitted photographs indicate nothing more than "bricks and concrete masquerading as rip-rap"; and

WHEREAS, given this glaring inconsistency and the lack of any evidence that what is identified on some of the surveys as rip-rap serves as a stabilized natural shore, the Board cannot credit the appellant's argument; and

WHEREAS, based upon the above, the Board agrees with DOB as to the calculation of upland lot area and the boundary of the waterfront zoning lot, using the MHWL; and

WHEREAS, however, the appellant makes the alternative argument that even if the MHWL is accepted as the appropriate line of reference, the MHWL measurement accepted by DOB is defective because the Willets Point Station, the station from which the measurement was taken, closed in 2000; and

WHEREAS, the appellant argues that since the MHWL measurement is suspect, then the upland lot area calculation is likewise suspect; and

WHEREAS, additionally, the appellant also suggests that NOAA standards for ascertainment of the MHWL were not followed; and

WHEREAS, DOB argues that since the Appellant's First Survey relies on the same data and that since both it and the Owner's Final Survey reflect the MHWL elevation of 1.7 ft., appellant's argument as to the insufficiency of the measurement is makes no sense and is moot; and

WHEREAS, the Board agrees that the closure of the Willets Point Station is irrelevant; and

WHEREAS, further, the Board notes that the appellant failed to provide proof that there was any deviation from accepted NOAA practice as to ascertainment of the MHWL; and

WHEREAS, the Board notes that the owner of the subject premises submitted a letter from a surveyor dated July 7, 2006, which establishes how the NOAA procedures were used to establish the MHWL for the premises; and

WHEREAS, the appellant failed to provide any persuasive argument as to why the explanation in the July 7, 2006 letter should not be credited by the Board; and

WHEREAS, thus, the Board concludes that the calculation of the MHWL was based upon sound

methodology and that it should be credited; and

WHEREAS, based upon the above, the Board finds the appellant's first argument – that the upland lot area and waterfront yard dimensions were calculated incorrectly based upon an improper line of reference, or based upon improper methodology – to be without merit; and

WHEREAS, as to the second argument, the appellant suggests that the required waterfront yard is non-compliant with yard requirements because the level of the waterfront yard has been raised; and

WHEREAS, specifically, the appellant contends that the owner of the premises illegally increased the elevation of the waterfront yard by raising the height of this wall; and

WHEREAS, the appellant argues that this renders the waterfront yard non-compliant, and cites to another provision of ZR § 62-332, which provides that the level of the waterfront yard shall not be higher than the level of the top of the adjoining existing bulkhead; and

WHEREAS, however, as already discussed, DOB maintains and the Board agrees that there is no bulkhead at the subject premises; and

WHEREAS, additionally, DOB notes that pursuant to ZR § 62-332, walls not exceeding four feet in height are permitted obstructions in a waterfront yard for single-family detached residences; and

WHEREAS, DOB determined that the wall is less than four feet; and

WHEREAS, accordingly, it is a permitted obstruction in the waterfront yard; and

WHEREAS, based upon the above, the Board finds the appellant's second argument to be without merit; and

WHEREAS, as to the third argument, the appellant contends that the proposed development fails to comply with: (1) rear; and (2) side yard regulations; and

WHEREAS, as to the rear yard, the appellant argues that a rear yard is required along the one of the shared lot lines between Lot 32 (the premises) and Lot 30 (the appellant's premises); and

WHEREAS, the appellant relies on a May 28, 1982 DOB Memo regarding "Yards in Irregular Lots" to support the claim that a rear yard is required along the line parallel to the waterfront yard which abuts the neighbor's yard; and

WHEREAS, the appellant argues that the 1982 Memo dictates that a 20 ft. yard would be required along the subject lot line; and

WHEREAS, DOB's first response is that the subject lot line is a side lot line, not a rear lot line; and

WHEREAS, DOB notes that pursuant to ZR § 12-10, a rear lot line is "any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being parallel to, and does not intersect, any street line bounding such zoning lot" and a side lot line is "any lot line which is not a front lot line or a rear lot line."; and

WHEREAS, DOB cites to the January 24, 2005 Reconsideration signed by former Queens Borough Commissioner Magdi Mossad, which relied on a 2004 update to the Owner's 2003 Survey, illustrating that that the northeast property line is at 54 degrees, 48 minutes from the street line; and

WHEREAS, DOB also notes that even if the subject side lot line were to be considered a rear lot line, as appellant alleges, that ZR § 62-332 specifically provides that rear yard regulations are inapplicable on waterfront zoning lots; and

WHEREAS, thus, in either case, the 1982 Memo would not apply; and

WHEREAS, for the reasons argued by DOB, the Board agrees and finds that the appellant's argument as to the alleged rear yard requirement is without merit; and

WHEREAS, as to side yard requirements, the appellant argues that the Building does not comply with the minimum required total width of 20 feet, with a minimum of eight feet in width for each yard; and

WHEREAS, the Board notes that the appellant has not submitted an analysis of the width of the side yards to substantiate claims that they are not in compliance; and

WHEREAS, DOB notes that the Owner's Final Survey for the premises, accepted by DOB, illustrates compliant side yards: one side yard with a width of 12 feet and the other side yard with a width of 8.8 feet and the total width of 20.8 feet; and

WHEREAS, therefore, the Board finds the appellant's third argument – alleging non-compliance as to rear yard and side yard requirements – to be without merit; and

WHEREAS, as to the fourth argument, the appellant contends that the Building's chimneys are non-compliant; and

WHEREAS, first, the appellant claims that the chimneys, as built, exceed the permitted degree of encroachment into the side yards; and

WHEREAS, pursuant to ZR § 62-13, the provisions of ZR § 23-44 – "Permitted Obstructions in Required Yards or Rear Yard Equivalents" apply to the subject premises; and

WHEREAS, pursuant to ZR § 23-44, chimneys are permitted obstructions so long as they do not: (1) project more than three feet into the side yards; and (2) exceed in area two percent of the required side yard; and

WHEREAS, the Board notes that DOB and the property owner provided calculations showing that only a portion of the two chimneys project into the side yard and that, under two separate calculations, the chimneys do not exceed the permitted obstruction parameters; and

WHEREAS, DOB also reviewed the compliance of the chimneys at the premises and determined that the owner's chimney projection calculations show that the chimneys at the premises do not project more than three feet into, and do not exceed two percent of the area of, the required side yards; and

WHEREAS, moreover, the Board notes that it is apparent that appellant, in making this encroachment argument, mistakenly cites to the full dimensions of each of the chimneys, rather than only the portion of the chimneys that extends beyond the perimeter wall and into the side yard; and

WHEREAS, the Board observes that only that portion of the chimney that encroaches into the required side yard is subject to permitted obstruction provisions, not the entire chimney itself; and

WHEREAS, the Board also notes that,while the appellant submitted the Appellant's Second Survey in support of this argument, no analysis accompanies this survey to

show that the chimney encroachment within the side yard exceeds the two percent limit; and

WHEREAS, finally, the Board observes that the westernmost of the Building's three chimneys does not even encroach into the side yard; and

WHEREAS, accordingly, the Board finds that there is no merit to the appellant's side yard encroachment argument; and

WHEREAS, second, an issue arose as to whether the chimneys as built violate height and setback requirements applicable on waterfront blocks, as set forth at ZR § 62-34; and

WHEREAS, more specifically, the issue is whether the heights of the chimneys are non-compliant as to ZR 23-661 "Required side and rear setbacks for tall residential buildings in low bulk districts", which provides for a 30 ft. elevation maximum; and

WHEREAS, a consultant of the owner disagrees that there is any such issue, and submitted an affidavit explaining why this argument fails; and

WHEREAS, the owner's expert disclaims the applicability of ZR 23-611, noting that ZR § 62-341(b)(1)(i) provides that the height and setback limitation of ZR § 23-60 et seq. (including ZR § 23-661) does not apply to the site; and

WHEREAS, however, the expert notes that ZR § 62-341(a)(4) provides that for waterfront lots, the permitted obstruction provisions of ZR § 23-62 are applicable; and

WHEREAS, the expert notes that ZR § 23-62(b) provides that "chimneys or flues with a total width not exceeding 10 percent of the aggregate width of the street walls of a building" within the list of permitted obstructions that may penetrate a maximum height limit; and

WHEREAS, the expert indicates that the aggregate width of the street walls (maximum widths of all street walls of the building within 50 feet of the street line) is 44.92 feet; the total width of chimneys parallel to the street wall and within 50 feet of the street line is 3'-8", which is less than ten percent of the aggregate width of street walls; and

WHEREAS, additionally, the Board notes that DOB relies on the Owner's Final Survey, which shows that the chimneys are in compliance with ZR § 23-62(b); and

WHEREAS, finally, the Board notes that the Appellant's Second Survey and accompanying remarks did not provide any analysis nor discussion that conclusively proved that the chimneys exceeded what is permitted under ZR § 23-62(b); and

WHEREAS, accordingly, the Board finds that there is no merit to the appellant's height and setback encroachment argument; and

WHEREAS, therefore, the Board finds the appellant's fourth argument to be without merit; and

WHEREAS, finally, the Board notes that the appellant argues in its August 29, 2006 submission that the hearing should have been continued, and alleges that the owner of the premises engaged in misrepresentation before the Board; and

WHEREAS, the Board has reviewed the record and has determined that there is no corroborating evidence in support of this claim; and

WHEREAS, in conclusion, the Board has reviewed the record and is not persuaded by any of the appellant's arguments.

Therefore it is Resolved that the instant appeal, seeking a reversal of the determination of the Queens Borough Commissioner, dated December 23, 2005, refusing to revoke building permits issued in connection with DOB Application No. 401846277 is hereby denied.

Adopted by the Board of Standards and Appeals, September 12, 2006.

93-06-A

APPLICANT – Sheldon Lobel, P.C., for Mei Hsien Peng, owner

SUBJECT – Application May 9, 2006 – Proposed construction of a 3 story + attic four family dwelling fronting on a unmapped street contrary to General City Law Section 36 and does not have adequate perimeter street frontage as per Building Code 27-291. Premises is located within the R5 Zoning district.

PREMISES AFFECTED – 50-08 88th Street, westerly side of 88th Street south of 50th Avenue, Block 1835, Lot 36, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 11, 2006, acting on Department of Buildings Application No. 40224159, reads, in pertinent part:

> "Objection #15, Proposed development is fronting on an unmapped street and that is contrary to General City Law, Section 36 subdivision 2.
>
> Objection #21, Proposed building does not have the adequate perimeter street frontage required (eight percent) as per BC 27-291. Proposed building is fronting in an unmapped street."; and

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

WHEREAS, by letter dated July 24, 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, June 22, 2006, acting on Department of Buildings Application No. 402373613, 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 September 8, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

135-06-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; John & Evelyn Maher, lessee.

SUBJECT – Application June 27, 2006 – Proposed reconstruction and enlargement of a one family house not fronting a mapped street contrary to GCL 36 and the upgrade of the private disposal system located in the bed of service road contrary to DOB policy. Premise sis located within the R4 Zoning District.

PREMISES AFFECTED – 37 Newport Walk, East side of New Port Walk 110.19 south of Oceanside Avenue. Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 22, 2006, acting on Department of Buildings Application No. 402373613, 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 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 total perimeter of the building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section 27-291 of the Administrative Code.

A2- The upgraded private disposal system 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 September 12, 2006 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated August 1, 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, June 22, 2006, acting on Department of Buildings Application No. 402373613, 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 June 27, 2006 "-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

34-06-A

APPLICANT – Victor K. Han, for Dimitrios Halkiadakis, owner

SUBJECT – Application March 1, 2006 – Proposed construction of a three family, three story residence with accessory three car garage located within the bed of a mapped street, contrary to Section 35 of the General City Law. Premises is located in a R4 Zoning District.

PREMISES AFFECTED – 41-23 156th Street, east side of 156th Street, 269' north of Sanford Avenue, Block 5329, Lot 15, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES – None.

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

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

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

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, SEPTEMBER 12, 2006
1:30 P.M.

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

ZONING CALENDAR

146-04-BZ
CEQR #06-BSA-156R
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.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 16, 2004, acting on Department of Buildings Application No. 500632880, reads, in pertinent part:

> "The proposed application to change an existing building in a M3-1 District to Residential . . . requires variances from the board of Standards and Appeals, as per Section 42-00"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M3-1 zoning district, the proposed conversion of an existing seven-story manufacturing building to a 92-unit Use Group 2 multiple dwelling, contrary to ZR 42-00; and

WHEREAS, the proposed residential building, which will be constructed using environmentally friendly (or "green") technology, will have a total gross square footage of 126,852 sq.

ft., which is the exact same square footage as exists in the manufacturing building; and

WHEREAS, the proposed building will rise to a total height of 92'-8", with setbacks at various levels; and

WHEREAS, 92 accessory parking spaces will be provided in a proposed public parking garage located across the street on a separate lot (Lot 50); as reflected as a condition below, this amount of accessory parking shall be provided in the garage for the life of the converted building; and

WHEREAS, because of the change to residential use, and the location of the site on a waterfront block, a shore public walkway ("the esplanade"), an upland connection and a visual corridor are required and will be provided on the subject site; and

WHEREAS, to create sufficient light and air for the proposed residential units, certain portions of the existing building will be removed in order to create outer courts; and

WHEREAS, the Board notes that initially the applicant proposed the recapture of the removed square footage, and additionally proposed the construction of approximately 4,000 sq. ft. of new floor space; and

WHEREAS, as discussed below, the Board expressed reservations about this proposal, and asked the applicant to justify both the recapture of the removed square footage and the addition of new square footage; and

WHEREAS, the Board was concerned that there was no justification for the initial proposal as the minimum variance in light of the alleged hardships; and

WHEREAS, after performing certain feasibility analyses, discussed below, the applicant subsequently revised the proposal to the current version, which reflects the recapture of the removed floor space but retains the existing square footage of the manufacturing building; no additional square footage is proposed; and

WHEREAS, a public hearing was held on this application on February 28, 2006 after due notice by publication in the *City Record*, with continued hearings on May 16, 2006 and July 25, 2006 and then to decision on September 12, 2006; and

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

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

WHEREAS, the Staten Island Borough President James Molinaro, City Council Member Michael McMahon and State Senator Diane Savino also support this application; and

WHEREAS, the subject premises is located on Edgewater Street between Salvaton Terrace and Sylva Lane, and has a total lot area of 124,240 sq. ft.; and

WHEREAS, Edgewater Street is, at 50 ft. in width, a narrow street; and

WHEREAS, as noted above, the site abuts the New York Bay, and a portion of the site (approximately 86,221 sq. ft.) is under water; the remainder (38,019 sq. ft.) is above water; and

WHEREAS, the upland portion of the site is occupied by an existing seven-story manufacturing building, with setbacks at various floors; and

WHEREAS, as originally constructed in 1917, the building was four stories, and was designed for and used by the Wrigley Gum Company for the manufacture of chewing gum; and

WHEREAS, the applicant states that a seven-story addition was connected to the existing four-story building in 1926; and

WHEREAS, the applicant states that gum production ceased in 1949; and

WHEREAS, the applicant further states that the building has been vacant for the past twelve years; and

WHEREAS, because of the inability to locate a conforming user for the building in the past twelve years, the applicant proposes its residential conversion; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming building: (1) the existing building is obsolete for its intended purpose, and can not be feasibly retrofitted for conforming use; (2) the site is located on a narrow street, which makes it infeasible to construct loading docks that would be sufficient for modern industrial users; and (3) the site is within an "Erosion hazard area", as designated by the City's Department of Environmental Protection; and

WHEREAS, as to obsolescence, the applicant notes the following: (1) that all of the floors are burdened with multiple interior and exterior mushroom columns, which are closely spaced and do not allow for the efficient use of the floor plates; (2) the floor-to-ceiling heights vary from floor to floor (from 7'-2" to 12'-0"), and are generally insufficient for the needs of modern manufacturing users; and (3) the building does not provide adequate loading docks for the size of trucks typically used by modern users; and

WHEREAS, the Board has reviewed the plans showing the existing conditions and has visited the site, and agrees that the building is obsolete for its intended purpose, given that it was designed for a specific single user, constructed in two stages, and cannot be feasibly retrofitted for a modern industrial user; and

WHEREAS, as to the second argument, the Board observes that the narrow width of the street and the narrow frontage of the site on the street exacerbates the already constrained loading dock possibilities; and

WHEREAS, as to the third argument, the applicant notes that to address the possibility of erosion from flooding, the lowest level of the building must be raised to above the 100 year floor line, which would result in an eight foot floor to ceiling height that is not viable for a modern conforming user; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a conforming office building, with 126,852 sq. ft. of office space; and

WHEREAS, the study concluded that this conforming scenario would not realize a reasonable return, since it would require a substantial retrofit of the existing building in order to overcome the structural deficiencies noted above; the cost of such a retrofit would not be overcome by the estimated rents for the office space; and

WHEREAS, the Board notes that at its suggestion, the site valuation was revised to reflect only the upland portion of the site; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning 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 notes that the immediate context near the site is as follows: to the north is a warehouse and small marina, to the south is a shipyard, and to the west is another warehouse and a site that is subject to a residential variance granted by this Board (currently undeveloped); and

WHEREAS, at the request of the Board, the applicant submitted an 800 ft. radius diagram; this diagram reflects that within this radius, five lots are occupied by commercial uses, five lots are occupied by industrial uses, five are occupied by warehouse uses, and approximately 55 are occupied by residential uses; and

WHEREAS, the Board has reviewed the submitted radius diagram and conducted its own site visit, and agrees that the character of the neighborhood is appropriately characterized as mixed-use; and

WHEREAS, as to the proposed envelope of the building, the Board notes that the overall height and floor area will remain as currently exists, and that all units will possess legal light and air as a result of the proposed structural modifications; and

WHEREAS, the Board also notes that any concern about parking impact is alleviated through the provision of 92 accessory parking spaces in the proposed adjacent garage; and

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

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

WHEREAS, as noted above, the Board expressed reservations about the initial proposal of both a recapture of the eliminated square footage and an increase in overall square footage; and

WHEREAS, the Board noted that the existing building is already over-built, and questioned why both the recapture and the increase were necessary; and

WHEREAS, the Board was also concerned about the use of the off-site garage building for accessory parking purposes, and questioned why the accessory parking could not be provided on-site; and

WHEREAS, the Board also questioned the potential inclusion of the "green" building costs, and suggested to the applicant that such costs be eliminated (if included) from the analysis to ensure that they did not distort the analysis such that additional floor space would be necessary; the Board notes that such costs are a development choice that should not have a bearing on the degree of relief sought; and

WHEREAS, accordingly, the applicant analyzed the following scenarios to address these concerns: (1) a residential building with on-site parking and no recapture of square footage; (2) a residential building with off-site parking and no recapture or increase of square footage; and (3) a residential building with off-site parking and recapture of square footage, but no increase; and

WHEREAS, none of the scenarios reflected the "green" building costs in any respect; and

WHEREAS, the applicant claimed that the first scenario did not realize a reasonable return, because no practical layout of the required amount of parking spaces could be achieved; and

WHEREAS, the Board observes that on-site parking is impractical because the column spacing of the building does not allow for the reasonable layout of the needed amount of parking; specifically, if the required amount of spaces is provided, the resulting layout does not provide sufficient aisle widths, stall widths, or turning radius; and

WHEREAS, based upon the above, the Board concludes that the applicant has proven that this scenario is infeasible; and

WHEREAS, the applicant claimed that the second scenario also did not realize a reasonable return, but that the third scenario did; and

WHEREAS, in addition to these three scenarios, the applicant also performed analyses of scenarios that made specific reference to the esplanade; and

WHEREAS, the Board notes that the esplanade is required due to the change to residential use; accordingly, the cost of the construction of the esplanade is a legitimate development cost that has been included in each of the feasibility studies; and

WHEREAS, the applicant conducted an analysis with esplanade costs of the following scenarios: (1) a building with the recapture of eliminated floor space; and (2) a building without the recapture of this space; and

WHEREAS, the analysis concluded that the scenario without the recapture would not realize a reasonable return, but that the scenario with the recapture would; and

WHEREAS, in order to be conservative, the applicant also did an analysis of the same two scenarios without esplanade costs; and

WHEREAS, the analysis concluded that the scenario

without recapture showed a very slight positive return, but not a high enough return to make the project feasible; and

WHEREAS, in sum, the applicant concluded that after including esplanade costs in the analysis of the proposal, the return is still reasonable and reflects the minimum variances; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04BSA156K dated April 5, 2004; 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, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: a April 2004, Environmental Assessment Statement and a May 2005 Phase I Environmental Site Assessment Report; and

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

WHEREAS, a Restrictive Declaration was recorded on August 16, 2005 for the subject property to address hazardous materials concerns; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M3-1 zoning district, the proposed conversion of an existing seven-story manufacturing building to a 92-unit Use Group 2 multiple dwelling, contrary to ZR 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 8, 2006"- fourteen (14) sheets; and *on further condition*:

THAT a minimum of 92 accessory parking spaces shall be provided in the public parking garage on Lot 50 for the lifetime of the proposed building;

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

THAT no grant is being made as to the development of the garage on Lot 50;

THAT the building, upon conversion, shall not exceed a total gross square footage of 126,852 sq. ft., as reviewed by DOB;

THAT all mechanical deductions shall be as reviewed and approved by DOB;

THAT no building permit for the proposed building shall be issued by DOB prior to the issuance of a permit for the public parking garage on Lot 50;

THAT no temporary or permanent certificate of occupancy shall be issued by DOB prior to the issuance of a permanent certificate of occupancy for the public parking garage;

THAT all waterfront zoning requirements shall be complied with and all approvals related to such requirements must be obtained, as determined by DOB, prior to the issuance of any building permit;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

381-04-BZ
CEQR #05-BSA-068K
APPLICANT – Sheldon Lobel, P.C., for Zvi Realty, LLC, owner.
SUBJECT – Application December 2, 2004 – Variance pursuant to Z.R. Section 72-21 to permit the construction of a four-story building to contain 20 residential units with 10 parking spaces. The site is currently an undeveloped lot which is located in an M1-1 zoning district. The proposal is contrary to district use regulations pursuant to Z.R. Section 42-00.
PREMISES AFFECTED – 83 Bushwick Place a/k/a 225-227 Boerum Street, northeast corner of the intersection of Boerum Street and Bushwick Place, Block 3073, Lot 97, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –

For Applicant: Jordan Most.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 19, 2004, acting on Department of Buildings Application No. 301866032, reads in pertinent part:

"The proposed construction of a residential building is not permitted in an M1-1 zoning district as per ZR Section 42-00."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an M1-1 zoning district, a four-story residential development with an FAR of 2.38, 20 dwelling units, nine accessory parking spaces, a streetwall height of 32'-6", and a total height of 51'-6" (including mechanicals), which is contrary to ZR § 42-10; and

WHEREAS, the applicant initially submitted a proposal for a four-story residential building with an FAR of 2.54, 26 dwelling units, ten accessory parking spaces, a street wall height of 48'-10" without a setback, and an overall building height of 54'-4" (including mechanicals); and

WHEREAS, the Board finds the current proposal, with the reduced street wall height and the provision of a setback, to be more contextual with the residential buildings in the vicinity; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in the *City Record*, with a continued hearing on July 25, 2006, and then to decision on September 12, 2006; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application on the condition that there be a formal arrangement for the provision of affordable housing units within the development; and

WHEREAS, in response to the Community Board's request, the applicant represents that two affordable housing units will be provided; and

WHEREAS, the subject premises is a 5,559 sq. ft. irregularly-shaped lot, located on the northeast corner of Bushwick Place and Boerum Street, in the East Williamsburg section of Brooklyn; and

WHEREAS, the site is undeveloped and used for vehicle parking, and is adjacent to a residential building on Boerum Street and a warehouse on Bushwick Place; and

WHEREAS, adjacent to the site, Bushwick Place is 46 feet wide (and therefore considered a narrow street) and dead ends to the south at Boerum Street; Boerum Street is 60 feet wide; and

WHEREAS, the applicant represents that the site was formerly improved upon with two-story and three-story residential buildings, and a one-story commercial building, which were all demolished by 1995; the site has been undeveloped since then; and

WHEREAS, as noted above, the applicant proposes to construct a four-story residential building, with a total residential FAR of 2.38, a total residential floor area of 13,251.2 sq. ft., a street wall height of 32'-6", a total height of 51'-6" (including mechanicals), 20 dwelling units, and nine accessory parking spaces; and

WHEREAS, since the proposed residential use is not permitted in the subject zoning district, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site's small size and irregular shape; (2) the site is undeveloped and adjacent to a residential use; and (3) the historic use of, and failed development attempts at, the site; and

WHEREAS, as to lot size, the applicant states that the small lot size does not allow for the creation of a viable conforming industrial building, with floor plates sufficient for modern manufacturing uses; and

WHEREAS, as to the lot shape, the applicant notes that the site has approximately 90 feet of frontage along Bushwick Place and 91 feet along Boerum Street, with depths ranging from 50 feet into the lot on Bushwick Place and 77 feet into the lot from Boerum Street; and

WHEREAS, the applicant also notes that Bushwick Place is only 46 feet wide along the site's frontage and that it intersects Boerum Street at an angle, which results in the site's acutely angular shape; and

WHEREAS, the applicant asserts that the irregular shape limits the site's as-of-right development potential because 59 percent of a conforming building's exterior walls would have street frontage and street frontage walls are more costly to construct than interior facing walls; and

WHEREAS, in order to establish the uniqueness of the small lot size, the applicant submitted a 400-ft. radius diagram with a corresponding table identifying the conforming uses and lot sizes, which illustrates that all but one of the conforming uses in the M1-1 district occupy significantly larger lots, ranging in size from 9,310 sq. ft. to in excess of 100,000 sq. ft.; and

WHEREAS, additionally, the applicant notes that most of these larger sites have better access to wide streets access, such as Johnson Avenue (which is 60 feet wide), as opposed to the narrow Bushwick Place; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building since it would have insufficient floor plates; and

WHEREAS, the Board also agrees that the site's shape would lead to increased construction costs related to the

construction of more exterior wall, but notes that such costs are minimal; and

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

WHEREAS, the applicant represents that the site has a history of residential use; and

WHEREAS, the applicant submitted Sanborn Maps from 1965 to 1980, which reflect that the lot was developed with a two-story residential building and a three-story residential building; over the course of time, the buildings were demolished; and

WHEREAS, the applicant represents that attempts have been made during the past 15 years to develop a conforming use at the premises, but these attempts failed because of the problems associated with the unique physical features, including the adjacency to residential use; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following as-of-right scenarios: a one-story manufacturing building and a two and a half-story community facility building; and

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

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

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

WHEREAS, in support of this representation, the applicant submitted a detailed land use survey and map; and

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

WHEREAS, the Board observes that the subject Boerum Street block-front is occupied by at least five residential buildings and that the portion of the block across Boerum Street to the south (Block 3082) within the radius is occupied by ten residential buildings; and

WHEREAS, the Board observes that there is also an R6 zoning district across Bushwick Place; and

WHEREAS, additionally, the radius diagram indicates that there are 21 residential buildings fronting Boerum Street within the radius of the site; and

WHEREAS, the applicant concludes, and the Board agrees, that the area is best characterized as mixed-use, given both the proximity of a residential district and the fact that a large number of sites within the subject manufacturing district are occupied by residential uses; and

WHEREAS, based upon the above, the Board finds that the introduction of 20 dwelling units (which reflects a reduction from the 25 units initially proposed) on this street will not impact any conforming uses nor change the character of the neighborhood; and

WHEREAS, as to the envelope of the building, the Board expressed concern about the applicant's initial proposal, noting specifically that the streetwall height along Boerum Street and the total height were not contextual with the other nearby residential buildings; and

WHEREAS, the Board also asked the applicant to lower the cellar in order to reduce the overall height and to set the fourth floor back so as to more closely match the streetwall of the adjacent residential buildings; and

WHEREAS, additionally, the Board notes that the applicant initially proposed that the building's entrance be located on Bushwick Place; and

WHEREAS, at hearing, the Board suggested that the building's entrance be relocated to Boerum Street as this would be more contextual with adjacent residential uses; and

WHEREAS, the applicant revised the proposal to show: (1) a ten-foot setback above the third floor and a streetwall height of 32'-6", (2) the cellar lowered to 2'-6" above grade, thereby reducing the overall height of the building by nearly three feet to 51'-6" (including mechanicals), and (3) the entrance on Boerum Street; and

WHEREAS, as noted above, the Board finds that these modifications enhance the compatibility of the building with the context of the neighborhood; and

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

WHEREAS, the Board notes that the case is predicated on the shape and size of the lot and its adjacency to a residential building, and the inability to develop the site in a way that would be viable to a modern conforming user; and

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

WHEREAS, as to the minimum variance, the applicant's revised plans, with the setback above the third floor, reduces the proposed floor area by nearly 1,000 sq. ft. and reduces the FAR from 2.54 to 2.38; and

WHEREAS, the revisions also reduced the unit count to 20, from the originally proposed 25; and

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

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

WHEREAS, 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. 05BSA068K, dated April 5, 2005; and

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

WHEREAS, the Department of Environmental Protection's (DEP) Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) an Environmental Assessment Statement dated April 5, 2005; and (2) a Phase I Environmental Site Assessment dated January 2005; and

WHEREAS, DEP requested the appropriate window/wall attenuation necessary to achieve an interior noise level of 45 dBA or lower in a closed-window condition; an alternate means of ventilation (central air-conditioning or air-conditioning sleeves) is necessary in order to maintain a closed-window condition; and

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

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on April 28, 2006 and submitted for recordation on May 12, 2006; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a lot within an M1-1 zoning district, a four-story residential development with 20 dwelling units and nine accessory parking spaces, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 8, 2006"-(13) sheets and "Received September 11, 2006"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: four stories; 20 dwelling units; a residential and total FAR of 2.38; a street wall height of 32'-6"; and a total height of 51'-6" (including mechanicals);

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 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 all dwelling units shall provide the appropriate window/wall attenuation necessary to achieve an interior noise level of 45 dBA or lower in a closed-window condition; an alternate means of ventilation (central air-conditioning or air-conditioning sleeves) is necessary in order to maintain a closed-window condition;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

124-05-BZ
CEQR #05-BSA-131M
APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.
SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).
PREMISES AFFECTED – 482 Greenwich Street, Block 7309, Lot 21 and 23, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Deirdre Carson.
For Opposition: Doris Diether, Community Board #2.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 31, 2005, acting on Department of Buildings Application No. 104054871, reads, in pertinent part:

"Proposed . . . lot coverage is not permitted in that it is contrary to ZR 23-145 of 80% for corner lot.

Proposed partial piece of building does not comply with side yard regulations. In addition the same area is subject to court regulations and does not comply with court regulations. ZR 35-32 and ZR 23-83.

Proposed parking area exceeds size permitted as per ZR 13-143. Maximum size permitted [is] 200 times 2 cars and 300 times 1 car for commercial store. (Maximum 700 square feet).

Proposed building exceeds setback regulations as per ZR 35-24.

Proposed location of curb cut for parking access is not permitted in that it is contrary to ZR 13-142A 'shall be located not less than 50 feet from the intersection of any two street lines'"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, setback, side yard, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142A; and

WHEREAS, the building, which will be built in accordance with the ZR's Quality Housing regulations, will have a total Floor Area Ratio (FAR) of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); and

WHEREAS, ten dwelling units and three parking spaces will be provided; and

WHEREAS, the proposed street wall height is 60 ft., and the total height is 120 ft.; and

WHEREAS, the FAR, density, street wall height, and total height comply with applicable C6-2A district regulations; in particular, the FAR complies with the 6.5 maximum for buildings with a community facility component; and

WHEREAS, the Board also notes that all of the proposed uses are as of right; and

WHEREAS, however, the proposed building is non-compliant as follows: (1) the proposed lot coverage is 96.6% (80% is the maximum permitted); (2) the proposed trapezoidal building form, at the proposed lot coverage, will not comply with the required width for a side yard, or, alternatively, a court; (3) a mall portion of the dormer will be located within the required 15 ft. setback at the 10th and 11th floors; (4) the proposed garage area is 862.9 sq. ft. (700 sq. ft. is the maximum permitted, based upon the proposed occupancies); and (5) the curb cut will be approximately 34 ft. from the intersection of Greenwich and Canal Streets (curb cuts are required to be at least 50 ft. away from the intersection); and

WHEREAS, the Board notes that the application as originally filed contemplated an eleven-story building, with the same waivers as indicated above, but also with a non-complying FAR of 7.98 (6.02 is the maximum permitted), a street wall height of 111 ft. (85 ft. is the maximum street wall height), and no setback at 85 ft. (a fifteen ft. setback is required at this height); and

WHEREAS, as discussed in greater detail below, the Board expressed serious concerns about the project as originally proposed, primarily because it did not credit certain of the alleged unique physical conditions that allegedly created the need for the FAR, street wall and setback waivers, and, to a lesser extent, because the proposed building appeared to be out of context with the surrounding built conditions; and

WHEREAS, while the applicant continues to contest the position of the Board as to its view as to the alleged hardships, the proposal was nevertheless modified to the current version near the end of the hearing process; and

WHEREAS, a public hearing was held on this application on January 24, 2006 after due notice by publication in the *City Record*, with continued hearings on April 25, 2006 and June 20, 2006 and then to decision on September 12, 2006; and

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

WHEREAS, Community Board 2, Manhattan, upon review of the initial version of the application, supported waivers for lot coverage, curb cut distance, and parking, but expressed opposition to the proposed FAR waiver; and

WHEREAS, the Department of City Planning opposed the initial version of this application, expressing concerns about the proposed FAR and resulting street wall height, and noting that the degree of waiver was not warranted and that the street wall height would be out of character with the built conditions in the neighborhood; and

WHEREAS, this application was opposed by the Canal West Coalition and certain individual neighbors of the site (hereinafter, collectively referred to as the "opposition"); relevant arguments of the opposition are discussed below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Canal and Greenwich Streets, and has a lot area of 3,136 sq. ft.; and

WHEREAS, the applicant notes that the site is located near the historic shoreline and is within Zone A – High Hazard Flood Plain; and

WHEREAS, while the site is currently in a C6-2A zoning district, it was formerly located within an M1-6 zoning district; the site was rezoned as part of the Hudson Square rezoning, approved by the City Council in 2003; and

WHEREAS, the applicant notes that during the CEQR review of the rezoning, what is known as an "E" designation was attached to the site, due to its history of gas station use; and

WHEREAS, the applicant states because of the "E" designation, prior to development, testing of the soil is mandated and soil remediation may be needed; further, the "E"

designation also establishes minimum noise attenuation requirements for development on the site, due to its location on Canal Street; and

WHEREAS, the site has 59 ft. of frontage on Greenwich Street, and approximately 96 ft. of frontage on Canal Street; and

WHEREAS, the applicant states the site is irregularly shaped, since the two frontages meet at an acute angle, forming a 55 degree wedge at the intersection, and since the northern lot line of the site is bowed and pinched in the center; and

WHEREAS, the site is currently fully paved and partially occupied by a one-story brick garage and former gas station at its western edge, and with a billboard on the eastern side; all of the existing improvements on the site will be removed in anticipation of the new building; and

WHEREAS, the applicant states that the commercial space, the community facility space, the three-car garage, and the residential lobby will be located on the first floor of the proposed building, and the residential units will be located on the second through 11th floors; outdoor terraces will also be provided for some of the units, and recreation space will be located on the second floor; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; (2) the site is proximate to a major thoroughfare, Canal Street; (3) the site is burdened with an "E" designation; and (4) the site is within the flood plain; and

WHEREAS, as to size and shape, the applicant states this causes two immediate problems: (1) the irregular shape makes it impractical to comply with side yard, courtyard, and lot coverage regulations, since an as of right building would have to either leave the narrow northwestern corner of the site undeveloped, resulting in a non-complying court or yard, or, if it was developed, it would result in non-usable space that would only increase construction costs without generating revenue from such space; and (2) the sharply angled lot boundaries and pinched interior of the site require the building to have a high "face" to "plate" ratio, which increases construction costs; and

WHEREAS, the Board agrees that the size and the shape of the site are unusual, and that significant constraints are place on an as of right development; and

WHEREAS, in particular, the Board credits the applicant's explanation of how the size and shape of the site make it impractical to develop the site in a way that complies with lot coverage, and courts and yards; and

WHEREAS, the Board observes that the imposition of these requirements on the site would lead to the creation of impractical floor plates, which would diminish the overall sell out value of the proposed units and, on each floor increase, the amount of space (cores and common areas) that do not generate revenue; and

WHEREAS, the requested lot coverage, yard and court waivers eliminate the impact that the site's size and shape have on development; and

WHEREAS, however, the Board disagrees that the costs associated with the high "face" to "plate" ratio constitute an unnecessary hardship; instead, the Board concludes that the value of the units, given the multiple exposures arising from the site's shape, and the resulting views, will result in a unit sell out value that will compensate for any increased construction costs that may arise from the shape of the building and "face" to "plate" ratio; and

WHEREAS, the applicant also states that the shape of the site necessitates the additional curb cut and parking waivers; and

WHEREAS, specifically, the applicant notes that the shape and the location of the site make it impossible to place the entire curb cut for the garage entrance anywhere but within 50 feet of the intersection of Canal and Greenwich Streets; and

WHEREAS, the applicant further notes that placement of the curb cut on Canal is infeasible since it is a heavily trafficked street, and the Greenwich Street frontage is too small to accommodate the entire width of the 20 ft. curb cut without locating it within 50 feet of the intersection; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the maximum parking area requirement of 700 sq. ft. while still providing a reasonable layout for three parking spaces (which is an allowed amount in the subject zoning district and which increases the overall viability of the project); thus, the additional 163 sq. ft. is necessary; and

WHEREAS, the opposition argues that the size and the shape of the lot are not unique, in that there are numerous irregularly shaped lots in the immediate vicinity; and

WHEREAS, the applicant responds that the subject site is one of the few in the area that is both irregular in shape and very small in size, and cited to the submitted radius diagram in support of this response; and

WHEREAS, additionally, the applicant also explained that of the 19 other irregular lots (out of the total of 71 lots on Blocks 594 and 595), nine are good candidates for an assemblage, and six are already fully developed; and

WHEREAS, the applicant concludes that irregularity is a characteristic likely to create hardship for only a few vacant or under utilized lots in the area; and

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

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

WHEREAS, the Board concludes that while there are other small, irregularly shaped sites in the subject zoning district, the conditions affecting the site are not so prevalent that the uniqueness finding cannot be made; and

WHEREAS, in sum, the Board finds that the requested lot

coverage, yard, court, curb cut and parking waivers are necessitated by the site's shape and size, and location on Canal Street; and

WHEREAS, when the applicant also proposed FAR, setback and street wall height waivers, evidence was submitted regarding the costs associated with the "E" designation and the location of the site within the flood plain (which leads to soil conditions that would require pile foundation construction); and

WHEREAS, because the FAR waiver request has been withdrawn, these alleged conditions and any costs associated with them are no longer relevant; and

WHEREAS, however, the Board did not find the "E" designation a sufficiently unique condition to warrant consideration as a hardship for which relief was warranted, given that almost all of the sites within the Hudson Square rezoning received such designations; specifically, the Board notes that 56 lots on adjacent and nearby blocks have "E" designations; and

WHEREAS, further, the Board does not view the costs related to the "E" designation (for sound attenuation and soil testing) as an unnecessary hardship, given that they are minimal and because the noise attenuation adds value to the units; and

WHEREAS, the Board also was not persuaded that the site's soil conditions and location within the flood plain was a unique physical hardship; and

WHEREAS, the Board observes that the uniqueness of the site's sub-surface conditions was not conclusively established by the applicant; and

WHEREAS, the Board acknowledges that the "E" designation and the soil conditions (which, as stated above, require that piles be used) add to overall development costs; and

WHEREAS, however, the Board concludes that these additional costs are overcome by the increased sell out value of the units – an increase that results from the waivers that the Board is granting; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's size and shape, and its location on Canal Street - creates unnecessary hardship and practical difficulty in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a complying 18,862 sq. ft., 6.02 FAR nine-story building with retail on the ground floor and residential units on the floor above; and

WHEREAS, the study concluded that this complying scenario would not realize a reasonable return, since a complying building would have a compromised and inefficient floor plate that would depress sell out value; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning 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 notes that the proposed height is comparable to two residential projects directly across the Greenwich Street from the site: one is ten stories, and one is 14 stories; and

WHEREAS, the applicant also cites to other sites in the vicinity that are either developed with buildings of comparable height in the process of being developed: an eight-story building proposed for the small block bounded by Canal, Greenwich and Watts Streets, and a nine-story building across Canal Street; and

WHEREAS, finally, the applicant notes that the façade treatment is in keeping with development in the area, and was designed to reduce any appearance of bulk; and

WHEREAS, the Board notes that the current proposal respects the floor area, height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is much more contextual with the surrounding neighborhood than the original proposal, which required waivers of FAR and street wall; and

WHEREAS, the Board notes that the lot coverage and yard/court waivers will not negatively impact any neighboring building, nor will the resulting building negatively affect the character of the neighborhood; and

WHEREAS, the Board observes that lot coverage is complied with above 60 feet, and the waiver is only needed for the floors beneath this height; and

WHEREAS, finally, the Board notes that after eliminating the FAR and street wall requests, the applicant initially submitted a building proposal which showed a fully compliant height, setback, and dormer; and

WHEREAS, however, concerns were raised as to the dormer above 60 feet, at the street line and adjacent to the lot line along Greenwich Street; and

WHEREAS, accordingly, the current proposal includes a dormer above 60 ft., set back from the street wall; and

WHEREAS, as a result of such configuration and the need to accommodate a sufficient amount of floor area on each floor, the dormer at the 10th and 11th floors modestly encroaches into the setback (approximately 13 sq. ft. at the 10th floor, and approximately 34 sq. ft at the 11th floor); and

WHEREAS, the Board further notes that the small setback waiver is the result of the desire to enhance light and air for the neighboring property, and that the design change that will incorporate this waiver was in response to certain concerns of the opposition; and

WHEREAS, the Board further notes that the curb cut waiver will not affect traffic patterns in the area, and will eliminate the need for a curb cut on Canal Street, as well as decreasing on street parking demand; and

WHEREAS, the Board observes that while the proposed garage does not comply with the minimum size requirement, the layout has been reviewed and is acceptable; and

WHEREAS, based upon the above, the Board finds that

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size, shape and location of the lot; and

WHEREAS, in addition to the complying scenario discussed above, the applicant also analyzed its initial proposal, a 6.02 FAR proposal with lot coverage, street wall height, setback, yard and court waivers, and a 6.02 FAR alternative, with lot coverage and yard/court waivers, but no setback waiver; and

WHEREAS, the applicant concluded that both 6.02 FAR scenarios and the 7.6 FAR scenario would not realize a reasonable return, but that the proposal would; and

WHEREAS, however, the Board expressed concern about the claimed revenue to be generated by the residential units, and suggested that it was understated; and

WHEREAS, in particular, the Board questioned whether the comparables used to generate the sell out value were too low and not an accurate reflection of unit values in the area; and

WHEREAS, further, as noted above, the Board did not view the initial proposal as the minimum variance; and

WHEREAS, after modifying the proposal, the applicant submitted a new feasibility study of the proposal that reflected an updated site value, sell out value, construction costs estimate, and interest rates; and

WHEREAS, the applicant also maximized the value of the as of right FAR and height by removing the proposed cellar, thereby decreasing construction costs and increasing revenue; and

WHEREAS, the applicant notes that the unit prices were based on the pricing structure suggested by the opposition, ranging from $1,200 per square foot for the smaller units to $1,950 per square foot for the larger units; previously, the per square foot value was approximately $1,000; and

WHEREAS, the Board has reviewed this revised study and finds it acceptable, as the sell out value has appropriately increased to reflect actual market conditions; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board notes that the opposition has made numerous arguments as to this application, many of which are no longer relevant because of the change in the proposal, particularly the arguments made in opposition to the floor area and height waivers; and

WHEREAS, particularly, concerns about inflated construction costs (i.e. piles) for site conditions that may not be unique are no longer relevant since the FAR waiver request has been withdrawn; further, concerns that the originally proposed FAR and street wall did not comport with the character of the neighborhood are likewise irrelevant; and

WHEREAS, as noted above, the Board agrees that certain of the cited physical conditions were not established as unique, and were therefore discounted; and

WHEREAS, the Board also notes that the financial data was updated, and that acceptable revenue projections were submitted; and

WHEREAS, however, the opposition continues to oppose the application even as currently proposed, and set forth a summary of its arguments in a submission dated August 15, 2006; and

WHEREAS, for the reasons cited by the applicant in its August 25, 2006 submission, the Board finds that none of the opposition arguments as to the current proposal are persuasive; and

WHEREAS, finally, the Board disagrees with the opposition's contention that the building as proposed should have been presented to the Community Board for another hearing and vote; and

WHEREAS, neither the City Charter nor the Board's Rules not mandate that further Community Board action is necessary when a proposed building is reduced in scale; and

WHEREAS, all that is required by the Board's Rules is that the Community Board be copied on submissions made by the applicant to the Board; here, that occurred; and

WHEREAS, while the Rules provide that the Board may send an applicant back to the Community Board at its discretion, the Board has determined that this is unnecessary in this case; and

WHEREAS, the Board observes that the Community Board expressed approval of the lot coverage, curb cut and parking waivers, and only objected to the FAR and significant street wall waiver; as noted above, these waivers have been withdrawn; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 05BSA131M dated May 20, 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; and

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

environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142(a); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 12, 2006" –(10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: ten total dwelling units; three parking spaces; a total Floor Area Ratio of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); a street wall height of 60 ft., and a total height of 120 ft; lot coverage of 96.6%; no side yard or court; a garage area of 862.9 sq. ft.; a curb cut approximately 34 ft. from the intersection of Greenwich and Canal Streets; and setbacks as indicated on the BSA-approved plans;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building permit;

THAT all mechanicals and bulkheads shall comply with applicable regulations;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

204-05-BZ

APPLICANT – Harold Weinberg, for Amalia Dweck, owner.

SUBJECT – Application August 26, 2005 – Pursuant to ZR §73-622, Special Permit for an enlargement of a two-family residence which increases the degree of non-compliance for floor area, open space, lot coverage and side yards is contrary to ZR §23-141 and §23-461. The application also proposed an as-of-right change from a one-family dwelling to a two-family dwelling.

PREMISES AFFECTED – 2211 Avenue T, north side, 57' east of East 22nd Street, between East 22nd and East 23rd Streets, Block 7301, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 29, 2005 acting on Department of Buildings Application No. 301970400, reads, in pertinent part:

"The proposed enlargement of the existing one-family residence in an R3-2 zoning district:

1. Increases the degree of non-compliance with respect to floor area ratio and is contrary to Sections 23-141 & 54-31 of the Zoning Resolution.
2. Creates non-compliance with respect to the open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to lot coverage and is contrary to Section 23-141 of the Zoning Resolution."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; and

WHEREAS, a public hearing was held on this application on June 13, 2006, after due notice by publication in *The City Record*, with continued hearings on July 18, 2006 and August 22, 2006, and then to decision on September 12, 2006; and

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

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

WHEREAS, the subject lot is located on the west side of Avenue T, between East 23rd Street and East 22nd Street; and

WHEREAS, the subject lot has a total lot area of 2,922 sq. ft., and is occupied by a 1,557.9 sq. ft. (0.53 FAR) single-family home; and

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

available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,557.9 sq. ft. (0.53 FAR) to 2,869.2 sq. ft. (0.98 FAR); the maximum floor area permitted is 1,753.2 sq. ft. (0.60 FAR, with attic); and

WHEREAS, the proposed enlargement will increase the lot coverage from 29.4 percent to 42.3 percent (the maximum permitted lot coverage is 35 percent) and reduce the open space from 2,061.2 sq. ft. to 1,237.4 sq. ft. (the minimum required open space is 1,899.3 sq. ft.); and

WHEREAS, the proposed enlargement will reduce one side yard from 14'-8 ½" to 5'-0" and one side yard from 11'-3" to 8'-0" (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, because the site is within 100 ft. of a corner, no rear yard is required; and

WHEREAS, the enlargement will maintain the non-complying 6'-4" front yard (a minimum front yard of 15'-0" is required); and

WHEREAS, the non-complying 22'-4" perimeter wall height will be reduced to 21'-0" (21'-0" is the maximum permitted perimeter wall height); the proposed enlargement will increase the total height to 35'-0" (35'-0" is the maximum permitted total height); and

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

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

WHEREAS, at hearing, the Board asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant submitted revised drawings highlighting the sections of the foundation and walls to remain; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space, and lot coverage, contrary to ZR §§ 23-141 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 25, 2006"–(8) sheets and "Received September 12, 2006"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 2,869.2 sq. ft., a total FAR of 0.98, a perimeter wall height of 21'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT there shall be no more than 504.6 sq. ft. of floor area in the attic;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets 13-15 of 20, stamped August 25, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

336-05-BZ
CEQR #06-BSA-034M

APPLICANT – Stuart A. Klein, Esq., for Rotunda Realty Corporation, owner; CPM Enterprises, LLC, lessee.

SUBJECT – Application November 23, 2005 – Special permit application under Z.R. §73-36 to permit a Physical Culture Establishment in the subject building, occupying the third and a portion of the second floor. The premise is located in M1-5B zoning district. The proposal is contrary to Z.R. §42-00.

PREMISES AFFECTED – 495 Broadway, a/k/a 66-68 Mercer Street, west side of Broadway between Spring and Broome Streets, Block 484, Lot 24, Borough of Manhattan

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein and Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....
0
THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 17, 2005 acting on Department of Buildings Application No. 104167376, reads, in pertinent part:

> "Proposed physical culture or health care establishment is not permitted as-of-right. BSA (special permit) approval required as per ZR 73-36."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a physical culture establishment ("PCE") to be located on the second and third floors of an existing eight-story commercial building, contrary to ZR § 42-00; and

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

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

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

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the site is located on the west side of Broadway between Spring and Broome Streets; and

WHEREAS, the building has a total floor area of 77,066 sq. ft.; and

WHEREAS, the PCE will occupy approximately 9,269 sq. ft. of floor area, with 7,154.7 sq. ft. on the second floor and 2,126 sq. ft. on the third floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for physical improvement, including golf skills, free weight, circuit, and cardiovascular training and aerobics; and

WHEREAS, the applicant submitted a sound attenuation analysis detailing measures to minimize the effects of sound and vibration and ensure code compliance; and

WHEREAS, the proposed hours of operation for the PCE are as follows: Monday through Thursday, 5:30 a.m. to 10:30 p.m.; Friday, 5:30 a.m. to 9:00 p.m.; Saturday, 8:00 a.m. to 8:00 p.m.; and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Board notes that the site is within the SoHo-Cast Iron Historic District and that the applicant has obtained a Certificate of No Effect from the Landmarks Preservation Commission; 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 PCE will not interfere with any pending public improvement project; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06BSA034M, dated November 26, 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 ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a PCE to be located on the second and third floors of an existing eight-story commercial building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 24, 2006"-(2) sheets and "Received July 13, 2006"–(1) sheet; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 12, 2016;

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

THAT the hours of operation shall be limited to

Monday through Thursday, 5:30 a.m. to 10:30 p.m.; Friday, 5:30 a.m. to 9:00 p.m.; Saturday, 8:00 a.m. to 8:00 p.m.; and Sunday, 8:00 a.m. to 6:00 p.m.;

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

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

THAT all signage shall comply with regulations applicable in M1-5B zoning districts within the SoHo Cast Iron Historic District;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

10-06-BZ

APPLICANT – Harold Weinberg, for David Cohen, owner.
SUBJECT – Application January 12, 2006 – Pursuant to ZR 73-622 Special Permit for the enlargement of a single family residence which increase the degree of non-compliance for lot coverage and side yards (23-141 & 23-48), exceeds the maximum permitted floor area (23-141) and proposes less than the minimum rear yard (23-47). The premise is located in an R4 zoning district.
PREMISES AFFECTED – 2251 East 12th Street, east side 410' south of Avenue V between Avenue V and Gravesend Neck Road, Block 7372, Lot 67, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Harold Weinberg.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2006 acting on Department of Buildings Application No. 302057002, reads, in pertinent part:

"The proposed enlargement of the existing detached residence in an R4 zoning district:

1. Creates a new non-compliance with respect to floor area ratio exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Reduces the rear yard below the 30' minimum required and is contrary to Section 23-47 ZR.
3. Extends the degree of non-compliance with respect to lot coverage ratio and lot coverage and is contrary to Sections 23-141 and 54-31 ZR.
4. Extends the degree of non-compliance with respect to side yards and is contrary to Sections 23-48 and 54-31 ZR."; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, and rear and side yards, contrary to ZR §§ 23-141, 23-47, 23-48, and 54-31; and

WHEREAS, a public hearing was held on this application on July 25, 2006, after due notice by publication in *The City Record*, with a continued hearing on August 22, 2006, and then to decision on September 12, 2006; and

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

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

WHEREAS, the subject lot is located on the east side of East 12th Street, between Avenue V and Gravesend Neck Road; and

WHEREAS, the subject lot has a total lot area of 2,400 sq. ft., and is occupied by a 1,305.7 sq. ft. (0.54 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,305.7 sq. ft. (0.54 FAR) to 2,863.5 sq. ft. (1.19 FAR); the maximum floor area permitted is 2,160 sq. ft. (0.90 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 40 percent to 46.2 percent (the maximum permitted lot coverage is 45 percent) and reduce the open space from 1,438.6 sq. ft. to 1,291.6 sq. ft. (the minimum required open space is 1,320 sq. ft.); and

WHEREAS, the proposed enlargement will reduce both side yards from 5'-0" each to 3'-11" each (side yards totaling 13'-0" are required with a minimum width of 5'-0" for one); and

WHEREAS, the proposed enlargement will maintain the complying 20'-0" front yard (a minimum front yard of 10'-0" is required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 27'-7" to 20'-0" (the minimum rear yard required is 30'-0"); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20'-0" of the rear lot line; and

WHEREAS, both the proposed perimeter wall height of 25'-0" and the total height of 35'-0" will comply with district regulations; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the proposed 1.19 FAR; and

WHEREAS, the applicant submitted information on the bulk parameters of other homes on East 12th Street, which were comparable to the proposed enlarged home; and

WHEREAS, additionally, the applicant submitted photographs of homes in the vicinity, which were comparable in size; and

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

WHEREAS, the Board also notes that the lot area is relatively small and that the FAR request is reasonable, given its size; and

WHEREAS, additionally, the Board asked the applicant to remove the front porch from the plans; and

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

WHEREAS, the Board also asked the applicant to clearly indicate which portions of the existing building were being maintained; and

WHEREAS, the applicant represents that all side walls will be retained; and

WHEREAS, the applicant submitted revised drawings highlighting which sections of the foundation, walls, and floors would remain; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for Floor Area Ratio (FAR), floor area, open space ratio, lot coverage, rear and side yards, contrary to ZR §§ 23-141, 23-47, 23-48, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 28, 2006" and "Received August 25, 2006"–(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 2,863.5 sq. ft., a total FAR of 1.19, a perimeter wall height of 25'-0", and a total height of 35'-0", all as illustrated on the BSA-approved plans;

THAT there shall be no more than 646.67 sq. ft. of floor area in the attic;

THAT the portions of the foundation, floors, and walls shall be retained and not demolished as indicated on the BSA-approved plans labeled Sheets 9-13 of 18, stamped August 25, 2006 and Sheet 17A, stamped June 28, 2006;

THAT those portions of the foundation, floors, and walls to be retained as indicated on the BSA-approved plans shall be indicated on any plan submitted to DOB for the issuance of alteration and/or demolition permits;

THAT the front porch shall be as be approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

37-06-BZ
CEQR #06-BSA-059M

APPLICANT – Leo Weinberger, Esq., for 180 Lafayette Corporation, owner, Skin Care 180, Incorporated, lessee.

SUBJECT – Application March 2, 2006 – Under Z.R. §73-36 to allow the proposed PCE (Jasmine Spa) on the first floor and cellar level in an existing seven-story building. The premise is located in a M1-5B zoning district.

PREMISES AFFECTED – 180 Lafayette Street, east side of Lafayette Street between Grand and Broome Streets, Block 473, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Doris Diether, Community Board #2M.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 2, 2006, acting on Department of Buildings Application No. 104119589, reads, in pertinent part:

"1. Proposed physical culture or health care establishment is not permitted as-of-right in M1-5B District per ZR 42-10.
2. Proposed physical culture or health establishment is not permitted as of right in a building in M1-5B District as per ZR 42-14.D.(3).
3. Proposed physical culture or health establishment is not permitted below the floor of second story in a building in M1-5B District as per ZR 42-14.D.(2).(b).."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a physical culture establishment ("PCE") to be located on the first floor and cellar level of an existing seven-story mixed-use commercial and residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 15, 2006, after due notice by publication in *The City Record*, and then to decision on September 12, 2006; and

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

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

WHEREAS, the Fire Department has indicated to the Board that it has no objection to this application, with the conditions set forth below; and

WHEREAS, the site is located on the west side of Lafayette Street between Broome and Grand Streets; and

WHEREAS, the building has a total floor area of 15,127 sq. ft.; and

WHEREAS, the PCE will occupy 1,160.94 sq. ft. on the cellar level and 1,751.36 sq. ft. on the first floor of the seven-story building; and

WHEREAS, the certificate of occupancy for the building, indicating that commercial use is permitted on the first floor and cellar level, was submitted into the record; and

WHEREAS, the applicant notes that the building is subject to two prior Board grants, (BSA Cal. Nos. 126-63-A and 133-91-A), which both address egress; and

WHEREAS, the applicant represents that the PCE will offer massages; facials and other beauty treatments; and classes on nutrition, stress management, and wellness; and

WHEREAS, the applicant proposes to operate the facility under the name Jasmine Spa; and

WHEREAS, the proposed hours of operation for the PCE are as follows: seven days a week, from 10 a.m. to 7 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 06-BSA-059M, dated March 2, 2006; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within an M1-5B zoning district, the establishment of a PCE to be located on the first floor and cellar level of an existing seven-story mixed-use commercial and residential building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 14, 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 September 12, 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 seven days a week, from 10 a.m. to 7 p.m.;

THAT all massages shall be performed only by New

York State licensed massage professionals;

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

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

THAT all signage shall comply with regulations applicable in M1-5B zoning districts;

THAT all fire protection measures, as indicated on the BSA-approved plans, shall be installed and maintained, as approved by DOB;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

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 **–**

For Applicant: Stuart A. Klein.

For Opposition: Joseph Scott.

ACTION OF THE BOARD – Laid over to October 31, 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 and Robert Pauls.

For Opposition: D. B.

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

33-05-BZ

APPLICANT– Sheldon Lobel, P.C., for Yeshiva Tiferes Yisroel, owner.

SUBJECT – Application February 24, 2005 – Variance pursuant to Z.R. 72-21 to permit the construction of a non-complying school (Yeshiva Tiferes Yisrael). The proposed Yeshiva will be constructed on lots 74, 76, 77, 78 and 79 and will be integrated with the existing Yeshiva facing East 35th Street which was approved in a a prior BSA grant on lots 11, 13, 15, and 16. The existing and proposed Yeshiva and their associated lots will be treated as one zoning lot. The subject zoning lot is located in an R5 zoning district. The requested waivers and the associated Z.R. sections are as follows: Floor Area Ratio and Lot Coverage (24-11); Side Yard (24-35); Rear Yard (24-36); Sky Exposure Plane (24-521); and Front Wall Height (24-551).

PREMISES AFFECTED – 1126/30/32/36/40 East 36th Street, west side of East 36th Street, between Avenues K and L, Block 7635, Lots 74, 76, 77, 78, 79, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most, Rabbi Jacobson, Dear Turk and L. Goldenberg.

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

47-05-BZ

APPLICANT – Cozin O'Connor, LLP, for AMF Machine, owner.

SUBJECT – Application March 1, 2005 – under Z.R. §72-21 to permit the proposed eight story and penthouse mixed-use building, located in an R6B zoning district, with a C2-3 overlay, which exceeds the permitted floor area, wall and building height requirements, is contrary to Z.R. §23-145 and §23-633.

PREMISES AFFECTED – 90-15 Corona Avenue, northeast corner of 90th Street, Block 1586, Lot 10, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for deferred decision.

199-05-BZ

APPLICANT – Joseph Morsellino, Esq., for Stefano Troia, owner.

SUBJECT – Application August 23, 2005 – under Z.R. §72-21 to allow a proposed twelve (12) story residential building with ground floor retail containing eleven (11) dwelling units in an M1-6 Zoning District; contrary to Z.R. §42-00.
PREMISES AFFECTED – 99 Seventh Avenue, located on the southeast corner of 7th Avenue and West 27th Street (Block 802, Lot 77), Borough of Manhattan
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Joseph Morsellino.
For Opposition: Jack Lester.

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

298-05-BZ
APPLICANT – Rampulla Associates Architects, for Pasquale Pappalardo, owner.
SUBJECT – Application October 4, 2005 – Variance pursuant to Z.R. Section 72-21 to construct a new two-story office building (Use Group 6) with accessory parking for 39 cars. The premises is located in an R3X zoning district. The site is currently vacant and contains an abandoned greenhouse building from when the site was used as a garden center. The proposal is contrary to the district use regulations pursuant to Z.R. Section 22-00.
PREMISES AFFECTED – 1390 Richmond Avenue, bound by Richmond Avenue, Lamberts Lane and Globe Avenue, Block 1612, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Phil Rampulla and Pat Pappalardo.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

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

363-05-BZ
APPLICANT – Dominick Salvati and Son Architects, for 108 Dwelling, LLC, owner.
SUBJECT – Application December 16, 2005 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed three (3) story residential building containing six (6) dwelling units and three (3) accessory parking spaces in an R5 district; contrary to Z.R. sections 23-141, 23-45(a), 23-462(a), 23-861, and 25-23.
PREMISES AFFECTED – 5717 108th Street, Westside Avenue between Van Doren Street and Waldron Street, Block 1966, Lot 83, Borough of Queens.
COMMUNITY BOARD #4Q
APPEARANCES –
For Applicant: Peter Hirshman and Amy Klet.
For Opposition: Ram M. Suctdev.

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

369-05-BZ
APPLICANT – Eric Palatnik, P.C., for 908 Clove Road, LLC, owner.
SUBJECT – Application December 22, 2005 – Variance ZR §72-21 to allow a proposed four (4) story multiple dwelling containing thirty (30) dwelling units in an R3-2 (HS) Zoning District; contrary to Z.R. §§23-141, 23-22, 23-631, 25-622, 25-632.
PREMISES AFFECTED – 908 Clove Road (formerly 904-908 Clove Road) between Bard and Tyler Avenue, Block 323, Lots 42-44, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Eric Palatnik and Robert Pauls.
For Opposition: MaryAnn McGowan.

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

54-06-BZ
APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.
SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story & cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR Sections 113-51 (Floor Area); 113-55 & 23-631 (Perimeter Wall Height, Total Height & Sky Exposure Plane); 113-542 & 23-45 (Front Yard & Setback); 113-543 & 23-461(a) (Side Yard); 113-544 (Rear Yard); 113-561 & 23-51 (Parking); and 113-22 (Loading Berth).
PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Eric Palatnik, David Shteierman, Rabbi Goodfreund
For Opposition: Stuart Klein, Marin Pope, Michael Gregorio, Morton Pupko, Pinny Sofier, Traci Schanke, Philip G. Kee, Chana Martel, Alfred Langner, Rachel Foanco, Nancy Kee and others.

ACTION OF THE BOARD – Laid over to November 14, 2006, at 1:30 P.M., for continued hearing.

55-06-BZ
APPLICANT – Rampulla Associates Architects, for Nadine

Street, LLC, owner.
SUBJECT – Application March 24, 2006 – Zoning variance pursuant to ZR Section 72-21 to allow a proposed office building in an R3-2/C1-1 (NA-1) district to violate applicable rear yard regulations; contrary to ZR Sections 33-26 and 33-23. Special Permit is also proposed pursuant to ZR Section 73-44 to allow reduction in required accessory parking spaces.
PREMISES AFFECTED – 31 Nadine Street, St. Andrews Road and Richmond Road, Block 2242, Lot (Tentative 92, 93, 94), Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Phil Rampulla.

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

104-06-BZ
APPLICANT– Eric Palatnik, P.C., for Martin Menashe, owner.
SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to partially legalize and partially alter a long standing enlargement to an existing single family residence which is contrary to ZR 23-141 for floor area and open space and ZR 23-46 for side yard requirement. The premise is located in an R-2 zoning district. This current application filing has a previous BSA Ca. #802-87-BZ.
PREMISES AFFECTED – 3584 Bedford Avenue, north of Avenue "O", Block 7678, Lot 84, Borough of Brooklyn.
COMMUNITY BOARD # 14BK
APPEARANCES –
For Applicant: Eric Palatnik.

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

106-06-BZ
APPLICANT– Sheldon Lobel, P.C., for Mendel Bobker, owner.
SUBJECT – Application May 23, 2006 – Pursuant to ZR §73-622 Special Permit to allow the enlargement of a two-family residence which exceeds the allowable floor area ratio per ZR 23-141, side yards less than the minimum per ZR 23-461 and proposes a rear yard less than the minimum required per ZR 23-47. The premise is located in an R-2 zoning district.
PREMISES AFFECTED – 1436 East 28th Street, west side of East 28th Street, 280 between Avenue N and Kings Highway, Block 7681, Lot 62, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Richard Lobel.
For Opposition: Robert Puleo, Frank Puleo and other.

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

113-06-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Columbia University in the City of New York, lessee.
SUBJECT – Application June 6, 2006 – Zoning variance pursuant to Z.R. Section 72-21 to allow a proposed 13-story academic building to be constructed on an existing university campus (Columbia University). The project requires lot coverage and height and setback waivers and is contrary to Z.R. Sections 24-11 and 24-522.
PREMISES AFFECTED – 3030 Broadway, Broadway, Amsterdam Avenue, West 116th and West 120th Streets, Block 1973, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: James Power.
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0

ACTION OF THE BOARD – Laid over to September 19, 2006, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

MINUTES

SPECIAL MEETING
WEDNESDAY AFTERNOON, SEPTEMBER 13, 2006
1:00 P.M.

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

174-05-A
APPLICANT – Norman Siegel on behalf of Neighbors Against N.O.I.S.E., GVA Williams for (Hudson Telegraph Associates, LP) owner; Multiple lessees.
SUBJECT – Application July 29, 2005 – Neighbors against N.O.I.S.E. is appealing the New York City Department of Buildings approval of a conditional variance of the New York City Administrative Code §27-829(b)(1) requirements for fuel oil storage at 60 Hudson Street.
PREMISES AFFECTED – 60 Hudson Street, between Worth and Thomas Streets, Block 144, Lot 40, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Norman Siegel, Council Member Alan J. Gerson, Peter Gleason, Metria Collin, Robert Gottheim, Bess Matassa, Tim Lannan, Madelyn Wils; Diane Stein, Alan Sash, Hal Bromm, Deborah Allen, Catherine Skopic and Chris D.
For Opposition: Phylis Arnold, Department of Buildings and James H. Farley.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Collins.....3
Negative:.....0
ACTION OF THE BOARD – Laid over to October 17, 2006, at 1:30 P.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director.