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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 92, No. 16

April 26, 2007

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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**SUSAN M. HINKSON**

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**Jeffrey Mulligan, *Executive Director***

**Roy Starrin, *Deputy Director***

**John E. Reisinger, *Counsel***

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
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<b>TELEPHONE - (212) 788-8500</b>
<b>FAX - (212) 788-8769</b>

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878-62-BZ & 879-62-BZ	399-423 East 52 <sup>nd</sup> Street, Manhattan
619-83-BZ	552-568 McDonald Avenue, Brooklyn
1059-84-BZ, Vol. II	943/61 Kings Highway, a/k/a 2032 Coney Island Avenue, Brooklyn
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264-06-BZ	1632 East 28 <sup>th</sup> Street, Brooklyn
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27-96-BZ	602-04 Coney Island Avenue, Brooklyn
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# DOCKETS

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New Case Filed Up to April 17, 2007  
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**78-07-BZ**

2515 McDonald Avenue, East side of McDonald Avenue distant north 142' feet from the corner formed by the intersection of McDonald Avenue and Avenue X running thence east 150' feet; thence north 80' feet thence west 150' feet and thence south 80' feet., Block 7173, Lot(s) 58, Borough of **Brooklyn, Community Board: 11.** (SPECIAL PERMIT)-73-36-For a Physical Culture Establishment.  
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**79-07-BZ**

114-05 Farmers Boulevard, Premises fronts the east side of Farmers Boulevard between Murdock Avenue and 114th Road., Block 11007, Lot(s) 5, Borough of **Queens, Community Board: 12.** (SPECIAL PERMIT) 11-411-To reinstate the prior variance and to extend the term of said variance for a period of ten (10) years..  
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**80-07-BZ**

319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue., Block 1253, Lot(s) 10, Borough of **Manhattan, Community Board: 7.** Under 72-21-To permit the construction of a community facility building.  
-----

**81-07-A**

10 Courtney Lane, South side Courtney Lane 177.31' east of Beach 203rd Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling and upgrade of a non-conforming private disposal system.  
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**82-07-A**

71 Bedford Avenue, East side Bedford Avenue @ mapped 12th Avenue 88.81' east of Beach 204th Street., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14.** General City Law Section 35, Article 3-Proposed construction and enlargement of an existing single family dwelling.  
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**83-07-A**

134 Ocean Avenue, West side Ocean Avenue 143.88' south of mapped 8th Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14.** General City Law Section 36, Article 3-Proposed reconstruction and enlargement of an existing single family dwelling.  
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**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.**

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# CALENDAR

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**MAY 15, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 15, 2007, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**142-30-BZ**

APPLICANT – Barbara Hair, Esq., for Target Realty LLC, owner.

SUBJECT – Application December 12, 2006 – Amendment to a variance previously approved pursuant to section 72-21 of the zoning resolution which allowed commercial office space (Use Group 6) on the cellar level of a residential building located in a R7-2 zoning district. The application seeks a change of use in the existing commercial space on the cellar level from Use Group 6 office to Use Group 6 store.

PREMISES AFFECTED – 8 St. Marks Place, south side, 126' east of 3<sup>rd</sup> Avenue, Block 463, Lot 13, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
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**737-86-BZ**

APPLICANT – Rampulla Associates Architects, for Angelo Falato, owner.

SUBJECT – Application February 9, 2007 – Extension of Term of a previously granted Variance (§72-21) for an existing one story retail store (Use Group 6) which will expire on June 2, 2007. R3-1 zoning district.

PREMISES AFFECTED – 3304 Amboy Road, between Buffalo Street and Hopkins Avenue, Block 4964, Lot 11, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**520-89-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for SJF Audubon Realty, LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Term for a previously granted variance to permit in an R7-2 zoning district a (Use Group 8) parking lot for more than 5 vehicles which expired on April 18, 2005; a waiver of rules of practice and procedure and an Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 1996.

PREMISES AFFECTED – 65 Audubon Avenue, easterly side of Audubon Avenue, 30' southerly of West 169<sup>th</sup> Street, Block 2125, Lots 30 & 31, Borough of Manhattan.

**COMMUNITY BOARD #12M**  
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**214-00-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.  
SUBJECT – Application October 18, 2006 – Extension of Term/Extension of time to obtain a Certificate of Occupancy and Amendment of a Special Permit granted pursuant to §73-242 to permit within a C3 zoning district an eating and drinking establishment.

PREMISES AFFECTED – 2761 Plumb Second Street, northeast corner formed by intersection of Plumb Second Street and Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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**201-02-BZ**

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application April 18, 2007 – Request for a waiver of Practice and Procedure and for an extension of time to complete construction and to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 6778 Hylan Boulevard, southeast corner of Page Avenue, Block 7734, Lots 13 & 19, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**135-05-BZ**

APPLICANT – Judith Gallent, Esq., Bryan Cave, LLP for L&M Equity Participants Ltd. and Harlem Congregations for Community Improvement, Inc, contract vendees

SUBJECT – Application April 18, 2007 – To reopen and amend a previously -approved zoning variance under ZR § 72-21 that allowed the residential conversion of an existing non-complying building previously used as a school (former PS 90) located in an R7-2 district; contrary to ZR § 23-142, ZR § 23-533, & ZR § 23-633. The proposed amendment would permit a 5,987 sf. ft. enlargement to the existing sixth floor.

PREMISES AFFECTED – 217 West 147<sup>th</sup> Street, located on block bounded by West 147<sup>th</sup> and West 148<sup>th</sup> streets and Adam Clayton Powell, Jr. and Frederick Douglas Boulevards, Block 2033, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #10M**  
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# CALENDAR

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## APPEALS CALENDAR

### 34-07-A

APPLICANT – Valentino Pompeo, for Gorian Papa, owner.  
SUBJECT – Application January 24, 2007 – Proposed alteration of an existing one family home located within the bed of a mapped street (72<sup>nd</sup> Lane) which is contrary to Section 35 of the General City Law. R4-1 Zoning District.  
PREMISES AFFECTED – 72-40 Myrtle Avenue, south of Myrtle Avenue, east of 72<sup>nd</sup> Street, Block 3511, Lot 27, Borough of Queens.

### COMMUNITY BOARD #5Q

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### 76-07-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner.  
SUBJECT – Application April 4, 2007 – Proposal to reconstruct and enlarge an existing one family dwelling and the upgrade of an existing private disposal system which does not front on mapped street, contrary to General City Law Section 36. R4 Zoning District.  
PREMISES AFFECTED – 485 Seabreeze Walk, east side of Seabreeze Walk, 204.11' south of Beach 213<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

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**MAY 15, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 15, 2007, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 43-06-BZ

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.  
SUBJECT – Application March 13, 2006 – Zoning variance under § 72-21 to allow a proposed house of worship to violate requirements for lot coverage (§ 24-11), front wall height (§ 24-521), front yard (§ 24-34), side yards (§ 24-35(a)), and accessory parking (§ 25-31). R5 district.  
PREMISES AFFECTED – 31-09 35<sup>th</sup> Avenue, north side of 35<sup>th</sup> Avenue, 80' 10" east of 31<sup>st</sup> Street, Block 608, Lots 3 and 4, Borough of Queens.

### COMMUNITY BOARD #1Q

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### 212-06-BZ

APPLICANT– Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.  
SUBJECT – Application August 22, 2006 – Variance (§ 72-

21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to § 22-10.

PREMISES AFFECTED – 242-02 61<sup>st</sup> Avenue, Douglaston Parkway and 61<sup>st</sup> Avenue, Block 8286, Lot 185, Borough of Queens.

### COMMUNITY BOARD #11Q

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### 308-06-BZ

APPLICANT– Eric Palatnik, P.C., for David Levitan, owner.

SUBJECT – Application November 22, 2006 – Special Permit (§ 73-622) for the enlargement of two semi-attached single family homes to be converted to a detached single family home. This application seeks to vary open space and floor area (§ 23-141(a)) and rear yard (§ 23-47) in R-2 zoning district.

PREMISES AFFECTED – 1458-1460 East 26<sup>th</sup> Street, between Avenue “N” and Avenue “O”, Block 7679, Lots 77 & 79, Borough Brooklyn.

### COMMUNITY BOARD #14BK

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### 322-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Hamid Kavian, owner.

SUBJECT – Application December 13, 2006 – Variance (§ 72-21) to permit the construction of a two family dwelling on a vacant lot with less than the required side yards contrary to ZR § 23-48 in an R3-2 zoning district.

PREMISES AFFECTED – 117-57 142<sup>nd</sup> Place, east side of 142<sup>nd</sup> Place, between 119<sup>th</sup> Road and Foch Boulevard, Block 12015, Lot 317, Borough of Queens.

### COMMUNITY BOARD #12Q

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### 72-07-BZ

APPLICANT– Sheldon Lobel, P.C. for Iren Israel Laniado, owner.

SUBJECT – Application March 28, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§ 23-141); side yard (§ 23-461); rear yard (§ 23-47) and perimeter wall height (§ 23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1941 East 26<sup>th</sup> Street, eastern side of 26<sup>th</sup> Street between Avenue S and Avenue T, Block 7305, Lot 70, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 17, 2007  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**947-80-BZ, Vol. II**

APPLICANT – Sheldon Lobel, P.C., for Hellmuth Owners Corporation c/o Grogan & Associates, owner.

SUBJECT – Application February 12, 2007 – Extension of Time to complete construction for a Variance that was originally granted on February 17, 1981 to allow the conversion of an eight story building from commercial to residential use which expired on March 25, 2007 in a C6-2A zoning district.

PREMISES AFFECTED – 154-158 West 18<sup>th</sup> Street, South side of West 18<sup>th</sup> Street between 6<sup>th</sup> Avenue and 7<sup>th</sup> Avenue, Block 793, Lot 67, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and an extension of the time to complete construction of a residential building, which expired on March 25, 2007; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the subject premises is located on West 18<sup>th</sup> Street, 141 feet east of Seventh Avenue; and

WHEREAS, the site is occupied by an eight-story and penthouse building, located within an M1-5 zoning district; and

WHEREAS, on February 17, 1981, under the subject calendar, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a penthouse enlargement and the conversion of the existing eight-story building to residential use; and

WHEREAS, on March 25, 2003, the Board granted an amendment which permitted the elimination of the conditions that the second floor be occupied by a commercial or manufacturing use and that 25 percent of the roof area be allocated as tenant recreation space; and

WHEREAS, the applicant proposes to convert the second floor to residential use, but has not completed the work; and

WHEREAS, the instant application seeks an extension of time to complete construction; and

WHEREAS, the applicant represents that an extension of time is necessary to allow for all of the tenants to vacate the subject floor prior to the conversion; and

WHEREAS, based upon its review of the record, the Board finds that a four-year extension is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 17, 1981, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from the date of this grant; *on condition:*

THAT substantial construction shall be completed by April 17, 2011;

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. 10315998)

Adopted by the Board of Standards and Appeals, April 17, 2007.

**395-04-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah Contract Vendee, owner; Meyer Unsorfer, lessee.

SUBJECT – Application June 16, 2006 – Request for a reopening and amendment to a previously-granted variance (§ 72-21) that allowed bulk waivers for a new house of worship in an R5 district. The proposed amendment includes the following: (1) increase in floor area and FAR, (2) increase in perimeter wall height; and (3) minor reduction in front yard provided.

PREMISES AFFECTED – 1232 54<sup>th</sup> Street, southwest side 242’-6” southeast of the intersection formed by 54<sup>th</sup> and 12<sup>th</sup> Avenue, Block 5676, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Yosef Gottdiener.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application for a reopening and

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# MINUTES

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an amendment to the previously approved plans for a new synagogue building; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, with continued hearings on January 23, 2007 and March 20, 2007, and then to decision on April 17, 2007; 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 Hinkson; and

WHEREAS, this application is brought on behalf of Congregation Imrei Yehudah, a non-profit entity; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Simcha Felder provided a letter in support of this application; and

WHEREAS, the subject premises is located on 54<sup>th</sup> Street, 242'-6" south of 12<sup>th</sup> Avenue, within an R5 zoning district; and

WHEREAS, on November 1, 2005, under the subject calendar number, the Board granted a variance to permit the construction of a new synagogue and rectory, including a rabbi's apartment and a sexton's apartment (UG 4), with non-compliances as to floor area, FAR, lot coverage, front wall and sky exposure plane, side and front yards, and parking; and

WHEREAS, the site is currently improved upon with a semi-detached, two-story two-family home; and

WHEREAS, the applicant proposes to demolish the existing building and to construct a new semi-detached synagogue and rectory; and

WHEREAS, the synagogue building, as approved, provided for a three-story portion and a one-story portion at the rear; and

WHEREAS, the new building has not been built and the applicant would like to make modifications to the approved plans in order to accommodate the synagogue's current articulated needs; and

WHEREAS, the applicant plans the following modifications to the approved plans: the addition of a second floor mezzanine connected to the synagogue on the first floor to accommodate women congregants, and other interior layout modifications; and

WHEREAS, specifically, the applicant proposes the following modifications to the approved plans: a floor area increase from 5,326 sq. ft. to 6,422.61 sq. ft.; an FAR increase from 2.24 to 2.70; and an increase in the perimeter wall height from 40'-4" to 41'-1"; and

WHEREAS, the additional height, FAR, and floor area are attributed to the addition of a fourth floor; and

WHEREAS, the applicant also proposes to decrease the front yard from 6'-3 1/8", as noted in the November 1, 2005 resolution to 5'-0"; the applicant contends that there was an error in the resolution and that the approved plans reflect that a 5'-0" front yard was contemplated and approved; and

WHEREAS, the Board agrees that the approved plans, which provide for a 5'-0" front yard, reflect the approved conditions; and

WHEREAS, the applicant proposes to increase the degree of non-compliance as to the sky exposure plane; and

WHEREAS, finally, the applicant proposes to maintain all other non-compliances approved pursuant to the original grant; and

WHEREAS, at hearing, the Board asked the applicant to establish the need for the increased size and to compare the proposed synagogue to other nearby institutions; and

WHEREAS, the applicant responded that the increases were necessary to provide for the reconfiguration of the first floor synagogue to accommodate a rabbi's study, auxiliary prayer room, and a mezzanine; and

WHEREAS, the applicant represents that the rabbi has requested a private study to accommodate his responsibilities to lead the congregation in private counseling and other small meetings; and

WHEREAS, the applicant represents that the auxiliary prayer room is needed for smaller groups of worshipers who may require a separate area for services, such as for a quorum of mourners; and

WHEREAS, the applicant represents that the second-floor mezzanine will provide separate facilities for women and girls, which is a traditional religious requirement; and

WHEREAS, as to a comparison of other such facilities, the applicant identified two nearby synagogues that are comparable in size and provided photographs of similarly-sized buildings nearby; and

WHEREAS, the Board asked the applicant to establish the need for a sexton's apartment, which occupies its own floor, in addition to the rabbi's apartment, which similarly occupies its own floor; and

WHEREAS, in response, the applicant provided a statement that it is customary to provide two apartments for religious officials, including the sexton; and

WHEREAS, the applicant initially requested to increase the building height to 43'-9" and to provide a more prominent parapet; and

WHEREAS, notwithstanding the programmatic needs of the synagogue, the Board expressed concerns about bulk and compatibility with neighborhood character and asked the applicant (1) to reduce the building height, and (2) to reduce the height of the parapet wall; and

WHEREAS, as to the building height, the applicant agreed to lower the front wall and total height to 41'-1" so as to be more compatible with nearby buildings; and

WHEREAS, the applicant represents that the building height cannot be reduced any more because (1) it is cost prohibitive to provide a deeper cellar; (2) the underpinning required for a deeper cellar might negatively impact the adjacent neighbor's home, and (3) the floor to floor heights are the minimum that can accommodate the proposed uses and mechanicals; and

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WHEREAS, the applicant agreed to lower the parapet wall to 2'-0" in order to minimize the visual impact; and

WHEREAS, the Board observes that the proposed amendment, to add 1,096.1 sq. ft. of floor area and to increase the building's total floor area from 5,326 sq. ft. to 6,422.61 sq. ft. is modest and does not affect the prior findings for the variance; and

WHEREAS, additionally, the Board notes that in its present iteration, the application provides for a total height of 41'-1", which is only nine inches more than what was originally approved; and

WHEREAS, based upon the above, the Board finds that the requested amendment is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on November 5, 2005, so that as amended this portion of the resolution shall read: "to permit the proposed modifications to the approved plans for a one- and three-story synagogue building, now a one- and four-story building, *on condition* that all work and site conditions shall comply with drawings marked 'Received January 9, 2007'—three (3) sheets, Received 'March 3, 2007'—five (5) sheets and 'Received March 22, 2007'—one (1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 6,422.61 sq. ft. (2.70 FAR), four stories, a height of 41'-1", a 5'-0" front yard, a 30'-0" rear yard above the first floor, and a lot coverage of 65 percent, all as illustrated on the BSA-approved plans;

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

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

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. 301860706)

Adopted by the Board of Standards and Appeals, April 17, 2007.

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## **878-62-BZ & 879-62-BZ**

APPLICANT – Sheldon Lobel, P.C., for Sutton House, Inc., owner.

SUBJECT – Application February 20, 2007 – Extension of Term of a Variance for the use of transient parking for the unused and surplus car spaces in an existing multiple dwelling accessory garage which will expire on July 5, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on June 23, 1999 in an R10/C1-5 zoning district.

PREMISES AFFECTED – 399-423 East 52<sup>nd</sup> Street; 404-20

East 53<sup>rd</sup> Street, north side of 52<sup>nd</sup> Street, between 1<sup>st</sup> Avenue and FDR Drive, Block 1364, Lot 5, Borough of Manhattan.

## **COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 10 A.M., for decision, hearing closed.

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## **619-83-BZ**

APPLICANT – Harold Weinberg, P.E., for Shalmoni Realty, Inc., owner.

SUBJECT – Application May 25, 2006 – Extension of Term/Waiver-for an existing automotive repair facility (use group 16) with parking for more than 5 vehicles located in a R5 zoning district. The waiver is sought due to the fact that the term expired on December 20, 2003.

PREMISES AFFECTED – 552-568 McDonald Avenue, corner of Avenue C and Church Avenue, Block 5352, Lot 33, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 10 A.M., for continued hearing.

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## **1059-84-BZ, Vol. II**

APPLICANT – Cozen O'Connor by Barbara Hair, Esq., for BMS Realty Co., LLC, owner; Bally Total Fitness Corp., lessee.

SUBJECT – Application December 22, 2006 – Extension of term of a special permit for the operation of a physical culture establishment (PCE) in a C4-2 zoning district within the Special Ocean Parkway District.

PREMISES AFFECTED – 943/61 Kings Highway, a/k/a 2032 Coney Island Avenue, northwest corner of intersection Kings Highway and Coney Island Avenue, Block 6666, Lot 18, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 10 A.M., for decision, hearing closed.

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## **21-91-BZ**

APPLICANT – Kenwyn A. Sandy, R.A., for Hardath

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Latchminarain, owner.

SUBJECT – Application March 12, 2007 – Extension of Term/Waiver of the rules of practice and procedures for a previously granted Variance (72-21) to operate an automobile glass and minor establishment (UG7) with sales of used cars (UG16) and an Extension of Time to obtain a Certificate of Occupancy in an R-5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Kenwyn A. Sandy.

For Opposition: Ronald J. Dillion.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

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**20-02-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co., LLC, owner; New York Sports Club, lessee.

SUBJECT – Application September 18, 2006 – Extension of Term/Amendment – To allow the operation of a Physical Culture Establishment/Health Club and change in hour of operation, on portions of the cellar, first floor and second floor of the existing five story mixed use loft building.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue South and East 23<sup>rd</sup> Street, Block 879, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Kathy Grove, Larry List and Nick Lecakes.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

**292-06-A**

APPLICANT – Sheldon Lobel, P.C., for 126 Newton St., LLC, owner.

SUBJECT – Application November 3, 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/M1-1. M1-2/R6A and MX-8 zoning district.

PREMISES AFFECTED – 128 Newton Street, south side of Newton Street, between Graham Avenue and Manhattan Avenue, Block 2719, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner/developer of the premises has obtained the right to complete a 15-unit eight-story residential building (the “Proposed Building”) under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on February 13, 2007, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2007, and then to decision on April 17, 2007; and

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

WHEREAS, the Department of Buildings appeared in opposition to this appeal, claiming that while the developer had obtained a valid foundation permit and commenced and completed foundation construction prior to the zoning change in question, no vesting may occur under it; this argument is addressed in detail below; and

WHEREAS, the appellant states that the subject premises is a 7,500 sq. ft. lot with approximately 75 feet of frontage on the south side of Newton Street, located between Manhattan and Graham Avenues; and

WHEREAS, the appellant states that development commenced on the site on March 4, 2005, when the developer was issued a demolition permit by DOB; and

WHEREAS, on April 1, 2005, DOB examined and approved foundation plans and other application materials for the Proposed Building, under DOB App. No. 301921909; and

WHEREAS, the foundation plans consist of two separate sheets, both of which were stamped as approved by the DOB examiner who reviewed them; and

WHEREAS, one of the sheets reflected zoning calculations for the entire Proposed Building, and described it as an eight-story, 15-unit residential building; and

WHEREAS, the application materials also reflected an eight-story, 70 feet high residential building; and

WHEREAS, on April 8, 2005, DOB issued a foundation permit (No. 301921909; hereinafter, the “Foundation Permit”), and foundation work commenced; and

WHEREAS, the appellant claims that the developer installed one hundred percent of the foundation as of April 26, 2005; and

WHEREAS, on May 11, 2005 (the “Enactment Date”), the City Council adopted the Greenpoint/Williamsburg rezoning, which changed the zoning of the subject site from R6/M1-1 (the “Prior Zoning”) to M1-2/R6A and MX-8 (the “New Zoning”); and

WHEREAS, the appellant states that under the New Zoning, the top two stories of the proposed building would not be permitted due to a height limitation; and

WHEREAS, the appellant notes that DOB improperly issued a new building permit on October 21, 2005 based on the Prior Zoning, and work continued on the site until

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August 8, 2006; and

WHEREAS, on August 8, work ceased pursuant to a DOB-issued stop work order; and

WHEREAS, the appellant argues, and the Board agrees, that the October 21, 2005 new building permit is not relevant to the instant vesting application, since it was issued after the Enactment Date; and

WHEREAS, the appellant also notes that as of August 8, 2006, six stories of the Proposed Building were completed, and the seventh and eighth stories were commenced but not completed; and

WHEREAS, the appellant claims that in October of 2006, the developer met with the then Brooklyn Borough Commissioner and obtained permission to work on elements of the Proposed Building allowable under the New Zoning; and

WHEREAS, the appellant also claims that on November 16, 2006, the developer met with DOB's technical staff to discuss the possibility of allowing additional construction to weather-proof and protect the existing construction; and

WHEREAS, through a reconsideration dated November 24, 2006, the then Brooklyn Borough Commissioner permitted weather-proofing work on the seventh and eighth floors, as well as all work on the first through sixth floors; and

WHEREAS, the appellant now seeks a common law vesting determination from this Board so that it may receive permits from DOB to complete the Proposed Building; and

WHEREAS, as a threshold issue, the appellant must establish whether work proceeded under a valid permit; and

WHEREAS, DOB states that the Foundation Permit is valid; and

WHEREAS, however, DOB argues that the work done under the Foundation Permit alone is insufficient to vest the right to construct the Proposed Building; and

WHEREAS, DOB asserts that the Foundation Permit did not authorize construction of the entire Proposed Building under the Prior Zoning; and

WHEREAS, the Board agrees that after the construction of the foundation, the developer would have had to obtain a new building permit in order to proceed with construction of the entirety of the Proposed Building; and

WHEREAS, however, the Board notes that unlike a case brought under ZR § 11-311 there is no requirement under the common law that work proceed pursuant to a building permit authorizing construction of the entire building; and

WHEREAS, the Board observes that the controlling case on the ability to vest a development under a foundation permit is Glenel Realty Corp. v. Town of Greenburgh, 4 A.D.2d 702 (2<sup>nd</sup> Dep't, 1957); and

WHEREAS, in Glenel, the court considered whether a developer seeking to develop a site with a shopping center had obtained vested rights to continue construction of one and two-story buildings pursuant to issued foundation permits; and

WHEREAS, specifically, the court noted that the developer in question had obtained four permits "issued for the

excavation and foundation work"; and

WHEREAS, the municipality's building inspector argued that the only vested rights the developer had obtained were to the foundations, and not to the anticipated superstructure; and

WHEREAS, the court rejected this contention, holding "[s]uch an argument is not only shocking to the sense of justice but also leads to a *reduction ad absurdum*. The foundation is an integral part of the whole structure; it *is the foundation*. Where, as here, the superstructure is for a one or two-story 'taxpayer' and part of the basement is to be utilized for rental purposes, the foundation may be said to be a major part of the whole structure. Consequently, the vested right in the foundation must connote a vested right to the erection and subsequent use of the specific superstructure for which the foundation was designed. It is the construction of the foundation and the substantial costs thereof which establish and define the builder's vested rights in relation to the superstructure and its use, and which entitle him to complete it in accordance with the zoning ordinance in force at the time of the construction of the foundation . . ." (*citations omitted; emphasis in original*); and

WHEREAS, the Board notes that Glenel has been cited with approval many times; and

WHEREAS, the Board takes particular note of Gershowitz v. Planning Bd. of Town of Brookhaven, 69 A.D.2d 460 (2<sup>nd</sup> Dep't, 1979), which, while overruled on procedural grounds by the Court of Appeals, cited to Glenel with approval as an example of a valid departure from the requirement of a full building permit; and

WHEREAS, thus, the Board concludes that Glenel is valid law; and

WHEREAS, further, the Board finds that the instant facts are comparable to those in Glenel; and

WHEREAS, as in Glenel, the developer here obtained a valid permit for a foundation related to a specific superstructure and then proceeded to make expenditures and perform construction pursuant to the permit; and

WHEREAS, further, the foundation here is unquestionably a fundamental component of the Proposed Building, for structural reasons and because accessory uses presumably would be located in the cellar; and

WHEREAS, in spite of the court's unambiguous holding, DOB attempts to distinguish Glenel in two ways; and

WHEREAS, first, DOB maintains that the foundations in question in Glenel were designed for a specific superstructure, namely one and two-story buildings; and

WHEREAS, DOB argues that since the completed superstructure of the Proposed Building is currently at six stories, it cannot be said that the foundation was designed specifically for the proposed eight stories; instead, DOB alleges that its design can accommodate less stories; and

WHEREAS, even if DOB is correct that the foundation can support a six-story building, the Board does not find this argument persuasive; and

WHEREAS, it is neither surprising nor determinative to the outcome of this matter that a foundation that can support an eight-story building can also support a building of six stories or

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less; and

WHEREAS, further, while the Board acknowledges that the Glenel court noted that the vested right to the foundation gives a vested right to the superstructure for which the foundation was designed, it also observes that this requirement is met; and

WHEREAS, the record indicates that the foundation as reflected on the Foundation Permit plans was designed for the Proposed Building; and

WHEREAS, the Foundation Permit contains language indicating that the application was filed for a foundation “for new building” and lists the number of stories as “8” and the proposed use as “residential apartment house”; and

WHEREAS, the only eight-story, residential “new building” that this language could possibly be referencing is the Proposed Building, since there was no other building reflected in the Foundation Permit plans and application materials; and

WHEREAS, additionally, the Foundation Permit plans and application materials contain explicit language about the contemplated eight-story superstructure; and

WHEREAS, these materials are part of the Foundation Permit, which could not be issued under the Building Code unless the plans and application materials associated with it reflected the zoning information (see Building Code § 27-164); and

WHEREAS, finally, the Board observes that DOB appears to provide confirmation of the fact that the foundation was intended to be part of the Proposed Building in its March 5, 2007 submission, stating “[t]he foundation application includes a description and diagram of an eight story residential building . . .”; and

WHEREAS, in sum, the Foundation Permit, plans and materials support the conclusion that the foundation was intended to be for the Proposed Building; and

WHEREAS, the Board finds that this satisfies the requirement in Glenel that the proposed foundation be designed for the contemplated superstructure; and

WHEREAS, accordingly, the Board respectfully disagrees with DOB’s first argument; and

WHEREAS, the Board notes that this determination is not affected by DOB’s claim at hearing that its Brooklyn Borough office did not review or approve the zoning calculations related to the Proposed Building, pursuant to an unwritten policy in that office; and

WHEREAS, DOB states instead that it only reviewed and approved the foundation construction; and

WHEREAS, the Board notes that this argument appears to be contradicted by the record; and

WHEREAS, as discussed above, the Foundation permit plans (including the calculations) reflect the specific approval stamp of the DOB examiner, and unmistakably illustrate that the Proposed Building was contemplated by the developer and that the foundation was designed for it; and

WHEREAS, aside from the statements of DOB’s legal representative, there is no qualification of the scope of DOB’s review anywhere in the Foundation Permit or the materials and plans associated with it, nor elsewhere in the record; and

WHEREAS, however, even though the Board accepts that DOB in fact conducted a limited review of the Foundation Permit plans and application materials, a full DOB review is not a prerequisite for a Board conclusion that the foundation was designed and intended for the Proposed Building; and

WHEREAS, DOB’s second argument is predicated on the Glenel court’s observation that the foundation permits in question apparently contained express language granting permission to build the contemplated buildings; and

WHEREAS, DOB contends that since the Foundation Permit does not reflect such language, the right to construct the Proposed Building cannot vest based on work performed under it; and

WHEREAS, the Board agrees that the Glenel court noted the language set forth on the foundation permits, which apparently authorized construction of the buildings; and

WHEREAS, however, the court did not hold that this was an essential requirement of its holding or vesting determination, nor did the court suggest that the outcome would have been different had the permits not contained this language; and

WHEREAS, in fact, the court’s discussion of this point came after it made its fundamental holding, as set forth above verbatim; and

WHEREAS, obviously, the court could have simply concluded that the foundation permits were the equivalent of new building permits, as this would have obviated the need for any further analysis; and

WHEREAS, instead, without any reference to the actual language set forth in the foundation permits, the court held that when a municipality authorizes construction of a foundation designed for a certain building, construction of that foundation is sufficient to vest; and

WHEREAS, the court also cited to many cases as precedent for this holding; and

WHEREAS, thus, the Board concludes that the Glenel court’s observation about the foundation permits in question merely supported the outcome of the case and that explicit authorization in the foundation permit to construct the entire building was not held to be a requirement for vesting; and

WHEREAS, finally, the Board notes that no other New York State court that has cited Glenel has held or even suggested that its applicability be limited to instances where the foundation permit in question contains language that authorizes the construction of the entire building; and

WHEREAS, accordingly, the Board also respectfully disagrees with DOB’s second argument; and

WHEREAS, therefore, based upon its review of Glenel and the record in this matter, the Board concludes that work performed and expenditures made under the Foundation Permit can provide the basis for a vesting determination under the common law; and

WHEREAS, assuming that a valid permit 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

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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 appellant notes that prior to the Enactment Date, all of the work necessary for the foundation, including all of the concrete pours, was completed; and

WHEREAS, in support of the assertion that substantial construction was performed, the appellant submitted the following evidence: affidavits from the foundation contractor, the developer, and the concrete supplier, concrete pour slips, and a foundation survey prepared prior to the Enactment Date; and

WHEREAS, based upon the above evidence, the Board concludes the foundation for the Proposed Building was completed prior to the Enactment Date; 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 appellant's analysis; and

WHEREAS, the appellant states that prior to the Enactment Date, the developer expended or committed \$672,180; and

WHEREAS, said expenditures and commitments related to excavation, foundation, labor and materials costs, as well as architectural, engineering and expediting costs; and

WHEREAS, as proof of this, the appellant has submitted invoices, cancelled checks, and spread sheets; and

WHEREAS, the Board considers this dollar amount significant, both in of itself for a project of this size, and when compared against the total development costs (\$2,192,381); and

WHEREAS, the Board's consideration is guided by the degree 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 serious loss, such a 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 and in part upon a showing that income would be

reduced due to lost units or density; and

WHEREAS, the appellant states that the top two stories of the Proposed Building could not be completed under the New Zoning, which would constitute a 30 percent reduction in anticipated sellable floor area; and

WHEREAS, the appellant concludes that the development would fail if this floor area was lost; and

WHEREAS, the Board also observes that some expended soft costs would likely be wasted, and some new soft costs would likely be necessitated, by any redesign of the Proposed Building that complies with the New Zoning; and

WHEREAS, thus, the Board agrees that the lost revenue arising from the reduced floor area and unit count, along with the soft costs, constitute a serious economic loss, and that the supporting data submitted by the appellant 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 finds that the appellant has satisfactorily established that a vested right to complete construction of the Proposed Building; and

WHEREAS, in so concluding, the Board also finds that the developer is entitled to file with DOB plans for the superstructure and all other building elements of the Proposed Building that conform in all respects to the Prior Zoning, and that also comply with all other applicable laws, in order to legalize the as-built construction and to complete the remaining work.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting the right to continue construction of the Proposed Building, as well as the issuance of a new building permit and issuance or renewal of other permits for various work types, necessary to complete construction and obtain a certificate of occupancy for the Proposed Building, is granted for four years from the date of this grant, *on condition that*:

1. The developer must submit a new application and set of plans to DOB for a new building permit that reflects the as built conditions and compliance with the Prior Zoning.
2. This application may not be professionally certified, but must receive plan examination under the Prior Zoning by a DOB examiner.
3. DOB must confirm that the as built conditions and the new plans comply in all respects with the Prior Zoning.
4. Any as built conditions that do not comply with the Prior Zoning must be remedied by the Developer.
5. The new plans may not reflect any parameter that creates a new non-compliance under the Prior Zoning.
6. Deviations between the new plans and the Foundation Permit plans are acceptable so long as such deviations comply with the Prior Zoning and

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other legal requirements.

7. Notwithstanding the above condition, the new plans may not reflect more than an eight-story, 70 feet high building, nor may the zoning floor area exceed 16,486 sq. ft.
8. Any questions that may arise during DOB's review of the developer's new plans may be referred to the Board's executive director for resolution.

Adopted by the Board of Standards and Appeals, April 17, 2007.

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### 330-06-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Thomas & Diane McNoble, lessee.  
SUBJECT – Application December 22, 2006 – Reconstruct and enlarge an existing one family dwelling and install a new septic system located within a bed of the mapped streets (Breezy Point Blvd & 203<sup>rd</sup> St.) contrary to General City Law Section 35 and does not front on a mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 203 Oceanside Avenue, north side 86.67' east of Bedford Avenue, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jon Ronan.

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 402511466, reads in pertinent part:

“Proposal to modify the interior space within the first floor of a home, construct a new second floor and install a new septic system on a site which is located within an R4 Zoning district but which does not front on a mapped street (Oceanside Avenue) and simultaneously lies within the bed of two (2) streets that are mapped streets (Breezy Point Blvd. and Beach 203<sup>rd</sup> Street)is contrary to Article 3, Section 36 (2) and 35 of the General City Law respectively and must, therefore be referred to the Board of Standards & Appeals for approval.”; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated April 17, 2007 the Fire Department states that it has reviewed the above project and

has no objections; and

WHEREAS, by letter dated March 21, 2007, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 402511466, is modified by the power vested in the Board by Section 35 and 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 December 22, 2006” “Proposed Plan A-1”-(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);

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, April 17, 2007.

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### 332-06-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Keith Matone, lessee.

SUBJECT – Application December 28, 2006 – Proposed reconstruction and enlargement of an existing one family home located and the upgrade of an existing private disposal system within the bed of mapped street which is contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 636 Bayside Avenue, north of Bayside Avenue, east of Bayside Drive, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Raymond Gomez.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough

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Commissioner, dated December 8, 2006, acting on Department of Buildings Application No. 402485930, reads in pertinent part:

“A-1 – The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

A-2 – The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings Policy.”; and

WHEREAS, a public hearing was held on this application on April 17, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated January 3, 2007, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated March 19, 2007, the Department of Transportation states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 2, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated December 8, 2006, acting on Department of Buildings Application No. 402485930, 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 April 13, 2007” “Proposed Plan BSA-1”– (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);

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, April 17, 2007.

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## 12-07-A

APPLICANT – David L Businelli, R.A., AIA, for Mr. Thomas Tuminello, owner.

SUBJECT – Application January 10, 2007 – Proposed construction of a one family dwelling not fronting on mapped street, contrary to Article 3, Section 36 of the

General City Law. R3X Zoning District.

PREMISES AFFECTED – 25 Allegro Street, North side of Allegro Street, 101.33 southwest corner of Bertram Avenue and Allegro Street. Block 6462, Lot 44, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: David Businelli.

**ACTION OF THE BOARD** – Appeal granted on condition  
THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 4, 2007, acting on Department of Buildings Application No. 500839603, which reads in pertinent part:

“1. The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

A.) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law; and

B.) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 27-291 of the NYC Building Code.”; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in the *City Record*, and then to closure and decision on April 17, 2007; and

WHEREAS, by letter dated March 28, 2007, 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 Staten Island Borough Commissioner, dated January 4, 2007, acting on Department of Buildings Application No. 500839603, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 28, 2007”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the lot subdivision 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 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

# MINUTES

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, April 17, 2007.

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## 238-06-A

APPLICANT – Kevin A. Finnegan, for Elizabeth Langwith, et al.

OWNER: Hudson 12<sup>th</sup> Development, LLC.

SUBJECT – Application September 12, 2006 – Appeal of the decision of the DOB refusal to revoke permits issued for a proposed dormitory (NYU) on a lot formerly occupied by St Anne's Church that allows the creation of a zoning lot under Section 12-10 (d) utilizing unused developmental rights from the United States Post Office, a government agency that is exempt from zoning regulations. C6-1 zoning district.

PREMISES AFFECTED – 110-124 East 12<sup>th</sup> Street, between Third and Fourth Avenue, Block 556, Lots 48 and 49, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Kevin Finnegan, Councilwoman Rosie Mendez, Brian Cak, Andrew Berman, Erin Drinkwater, David Chang, Gregory Brender, Frances Goldin Jose, Alan Marinoff, Elizabeth Lauguith, Keen Bergen, Katherine Wolpe, Carole DeSaram, Richard Barkett and others.

For Opposition: David M. Satnick and Jeffrey B. Rosen.

For Administration: Lisa Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 10 A.M., for decision, hearing closed.

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## 45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application February 8, 2007 – For a determination that the owner of the premises has acquired a common-law vested right to continue development commenced under the prior R6 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue “N” and Avenue “O”, Block 6756, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Trevis Savage.

For Opposition: Mark J. Kurzman and Abraham Lasker.

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

**ACTION OF THE BOARD** – Laid over to May 22,

2007, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

## REGULAR MEETING TUESDAY AFTERNOON, APRIL 17, 2007 1:30 P.M.

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

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## ZONING CALENDAR

### 239-04-BZ

#### CEQR #04-BSA-221K

APPLICANT – Agusta & Ross, for 341 Scholes Street, LLC, owner.

SUBJECT – Application June 24, 2004 – Variance (§72-21) to permit the proposed residential occupancy, Use Group 2, within an existing loft building, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

PREMISES AFFECTED – 225 Starr Street, northerly side of Starr Street, 304’ east of Irving Avenue, Block 3188, Lot 53, Borough of Brooklyn.

#### COMMUNITY BOARD #4BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

Adopted by the Board of Standards and Appeals, April 17, 2007.

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### 288-06-BZ

#### CEQR #07-BSA-033Q

APPLICANT– Sheldon Lobel, P.C., for Church of God of St. Albans, owner.

SUBJECT – Application October 30, 2006 – Variance (§72-21) to permit the construction of a two-story church in an R2 zoning district. The proposal is requesting waivers of §24-111 (FAR), §24-521 (wall height, setback and sky exposure plane), §24-34 (front yard) and §24-35 (side yard).

PREMISES AFFECTED – 223-07 Hempstead Avenue, north side of Hempstead Avenue, between 223<sup>rd</sup> and 224<sup>th</sup> Streets, Block 10796, Lot 4, Borough of Queens.

#### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on

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condition.

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough  
Commissioner, dated October 4, 2006, acting on Department of  
Buildings Application No. 402846954, reads, in pertinent part:

“Proposed community facility FAR and total FAR is  
contrary to Zoning Resolution Section 24-111.

Proposed front yard is contrary to Zoning Resolution  
Section 24-34.

Proposed side yard is contrary to Zoning Resolution  
Section 24-35.

Proposed wall height, setback and sky exposure plane  
is contrary to Zoning Resolution Section 24-521.”;

and

WHEREAS, this is an application under ZR § 72-21, to  
permit, within an R2 zoning district, the construction of a two-  
story church, which results in noncompliance as to FAR, floor  
area, front yard, side yard, wall height, setback, and sky  
exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and  
24-521; and

WHEREAS, a public hearing was held on this  
application on March 20, 2007, after due notice by publication  
in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, the site and surrounding area had a site and  
neighborhood examination by a committee of the Board,  
including Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens,  
recommends approval of the application; and

WHEREAS, Council Member Leroy Comrie provided a  
letter in support of the application; and

WHEREAS, the owner of an adjacent property to the rear  
provided testimony in support of the application; and

WHEREAS, the application is brought on behalf of the  
Church of God of St. Albans (the “Church”), a non-profit  
religious institution; and

WHEREAS, the site is located on the north side of  
Hempstead Avenue, between 223<sup>rd</sup> Street and 224<sup>th</sup> Street; and

WHEREAS, the site has a width of 80 ft. and a depth  
ranging from 102.34 feet to 105.44 feet, with a total lot area of  
8,314 sq. ft.; and

WHEREAS, the western portion of the site is currently  
occupied by a two-story semi-detached building (the “Existing  
Building”), which is located on the front lot line, and a one-  
story garage, which is occupied by the Church; the eastern  
portion of the site is currently vacant; and

WHEREAS, the applicant proposes to enlarge the  
Existing Building to the east (the Existing Building and the  
enlargement, hereinafter the “New Building”); and

WHEREAS, the New Building will have a total floor  
area of 8,024 sq. ft. (0.965 FAR); a maximum floor area of  
4,157 sq. ft. (0.5 FAR) is permitted for a community facility in

the subject zoning district; and

WHEREAS, the applicant proposes to maintain the  
existing streetwall condition by locating the New Building on  
the front lot line, without any front yard (a minimum front yard  
of 15’-0” is required); and

WHEREAS, the applicant also proposes to maintain the  
semi-detached condition of the Existing Building and to  
provide a single side yard of 40’-8” (two side yards with a  
minimum width of 8’-0” each are required) to the east of the  
New Building; and

WHEREAS, the applicant proposes to retain the existing  
26’-2” perimeter wall and to add a pitched roof with a total  
height of 38’-3” without a setback to a portion of the New  
Building; a maximum perimeter wall height of 25’-0” is  
permitted in the subject zoning district; and

WHEREAS, the applicant proposes for the cellar level to  
be occupied as a community center/multi-purpose room to be  
used for youth and after school programs and a kitchen,  
accessory storage, and restrooms; and

WHEREAS, the applicant proposes for the first floor to  
be occupied primarily with the 98-seat worship space and also  
accessory office and storage space and restrooms; and

WHEREAS, the applicant proposes for the second floor  
to be occupied with a Bible study and meeting room,  
conference room, accessory office and storage space, and  
additional restrooms; and

WHEREAS, the applicant represents that the variance  
request is necessitated by the programmatic needs of the  
Church, which seeks to build a new building in order to  
accommodate the growing congregation and its accessory  
services; and

WHEREAS, specifically, the applicant represents that the  
proposed FAR and floor area are necessary to accommodate  
the programmatic needs discussed below and that the side yard,  
front yard, height, and setback waivers are necessary to  
accommodate the worship space on one level while  
accommodating the required parking spaces in a single  
accessory parking lot; and

WHEREAS, the applicant states that the following are  
the programmatic space needs of the Church: (1) a need to  
accommodate the significant increase in attendance over the  
past 30 years; (2) a need to accommodate accessory  
educational, meeting, and community center space; and (3) a  
need to improve access and modernize facilities; and

WHEREAS, as to attendance, the applicant represents  
that since its founding in 1976, the Church’s congregation has  
increased substantially and has outgrown two prior facilities;  
and

WHEREAS, the applicant represents that the Church has  
a congregation of approximately 120 members and the current  
facility is overcrowded; and

WHEREAS, the applicant represents that the Church  
currently occupies a total of 4,120 sq. ft. of floor area in the  
Existing Building but that this cannot accommodate the  
required amount of worship space, offices, and accessory  
services; and

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WHEREAS, the applicant represents that the Church's worship space is limited to the first floor of the existing building and the second floor is partially occupied by administrative use and partially occupied as a residence for the Church's custodian; and

WHEREAS, additionally, the applicant represents that the Existing Building does not have sufficient seating to accommodate the congregation and that, routinely, some attendees are required to stand during Church services; and

WHEREAS, the applicant represents that the proposed 98 seats will accommodate the current congregation and allow for some growth; and

WHEREAS, as noted, the Church offers a number of accessory services including educational and youth programs, after school programs, and meeting space available to the community, which cannot all be accommodated in the Existing Building; and

WHEREAS, as to the facilities, the proposed improvements include a larger entrance, which will be handicapped-accessible, and additional restrooms; and

WHEREAS, the applicant also proposes to provide a single accessory parking lot with eleven parking spaces on the eastern portion of the site; and

WHEREAS, the Board finds that the noted programmatic needs are legitimate, and agrees that the construction of the New Building is necessary to address the Church's needs, given the limitations of the Existing Building; and

WHEREAS, further, the Board notes that the New Building will be integrated with and relate to the Existing Building in an efficient manner; and

WHEREAS, the Board notes that the site's existing conditions (the Existing Building with its non-compliances) necessitates the additional waivers including front and side yards and height and setback; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the Existing Building, when considered in conjunction with the programmatic needs of the Church, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant represents that the surrounding area is characterized by one- and two-story buildings occupied by residential uses and by a number of commercial buildings with frontage on Hempstead Avenue; and

WHEREAS, the three attached buildings to the west of

the site are occupied by commercial uses and do not have front yards; and

WHEREAS, the front of the New Building will be integrated into the Existing Building and provide a consistent street wall with the attached row of commercial buildings; and

WHEREAS, the applicant proposes to provide an open space, with parking, with a width of 40'-8" between the New Building and the existing one-story detached building to the east; and

WHEREAS, the applicant proposes to provide a parking lot with 11 spaces (ten spaces are the minimum required), which is sufficient to accommodate the parking demand; and

WHEREAS, additionally, the applicant notes that the Church has occupied the site since approximately 1983 and is a fixture in the community; and

WHEREAS, the Board agrees that the proposed New Building is compatible with the surrounding neighborhood; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no as of right development at the site would meet the programmatic needs of the Church; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected needs of the Church; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Church to fulfill its programmatic needs; and

WHEREAS, 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. 07BSA033Q, dated February 8, 2007; 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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a two-story church, which results in noncompliance as to FAR, floor area, front yard, side yard, wall height, setback, and sky exposure plane, contrary to ZR §§ 24-111, 24-34, 24-35, and 24-521, 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 April 3, 2007"- (6) sheets and on further condition:

THAT the building parameters shall be: a total floor area of 8,024 sq. ft. (0.965 FAR), a total height of 38'-3", as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, April 17, 2007.

## 290-06-BZ

### CEQR #07-BSA-034M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 386 LLC, owner; 11 Great Jones, LLC, lessee.

SUBJECT – Application November 1, 2006 – Variance under §72-21 to allow a six (6) story residential building containing ground floor retail and eight (8) dwelling units. The project site is located within an M1-5B district and is contrary to use regulations (§§42-00 and 42-14(d)(2)(b)).

PREMISES AFFECTED – 372 Lafayette Street, 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets, Sinbone Alley, Block 530, Lot 13, Borough of Manhattan.

### COMMUNITY BOARD #2M

#### APPEARANCES –

For Applicant: James Power and Doris Diether, CB #2.

**ACTION OF THE BOARD** – Application granted on

condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 19, 2006, acting on Department of Buildings Application No. 104520608, reads in pertinent part:

“Proposed Use Group 2 residential use (dwelling units) in a manufacturing district is contrary to ZR 42-10 and it is not permitted. There are no bulk and use regulations for UG 2 in a manufacturing district.

Proposed use Group 6 in manufacturing district M1-5B is contrary to ZR 42-142(2)(d) and it is not permitted in that only uses listed in Use Group 7, 9, 11, 16, 17A, 17B, 17C or 17E shall be allowed below the floor level of the 2<sup>nd</sup> story.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in the *City Record*, and then to decision on April 17, 2007; 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 Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of the application on condition that there be no signage on the building and that no bar or restaurant occupy the ground floor space; and

WHEREAS, the site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, within an M1-5B zoning district; and

WHEREAS, the site has a lot area of 3,039.4 sq. ft.; and WHEREAS, site is occupied by a one-story auto repair establishment that will be demolished; and

WHEREAS, the site has 26'-4" of frontage on the south side of Great Jones Street and 100'-7" of frontage on the west side of Lafayette Street; and

WHEREAS, the site has a width of 34'-6" along the southern lot line; a one-story gas station occupies the adjacent lot to the south; and

WHEREAS, the site has a trapezoidal shape, attributed in part to the widening and extension of the former Elm Street and Lafayette Place at Great Jones Street in the late 19<sup>th</sup> Century, as discussed below; and

WHEREAS, the proposed building will have a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5

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sq. ft. (0.50 FAR), a height of 70'-10 ¾", without bulkheads, and a total height of 79'-10 ¾", with bulkheads; and

WHEREAS, the cellar level will be occupied by storage and accessory use; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance, located on the southern end of the Lafayette Street frontage; and

WHEREAS, the second through fourth floors will each be occupied by two residential units; and

WHEREAS, the fifth and sixth floors will each be occupied by two duplex units; and

WHEREAS, proposed building will rise without setback to a full height of 70'-10 ¾" along both Lafayette Street and Great Jones Street; and

WHEREAS, the building will be constructed with a pre-fabricated modular system based on cargo containers, stacked above a ground floor retail space of conventional steel frame construction; 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 is irregularly-shaped; (2) the site is small; (3) the site is adjacent to the Lexington Avenue subway line; and (4) the historic use of the site as a gasoline service station and automotive repair shop has resulted in soil contamination; and

WHEREAS, as to the site's shape, the applicant states that it is trapezoidal with a depth ranging from 26'-2" to 34'-6" from Lafayette Street and 100'-6" from Great Jones Street; and

WHEREAS, as mentioned above, the shape of the site is partly attributed to the creation of Lafayette Street between East Houston Street and Great Jones Street in the 1890s, which replaced the former Elm Street and Lafayette Place and claimed an irregularly-shaped sliver of the historic lot; and

WHEREAS, because of the site's long and narrow shape and the large amount of street frontage, there is a high ratio of exterior walls to usable interior; and

WHEREAS, the applicant documented additional construction costs associated with the need for such a high proportion of exterior walls; and

WHEREAS, as to size, the applicant represents that the site is small, which results in a high loss factor as a disproportionate share of each floor would be devoted to the building core; and

WHEREAS, the applicant represents that the small size of the site and its irregular configuration would not provide efficient floorplates for a conforming hotel or office development at the site; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the Lexington Avenue subway line is approximately 20 feet deep and located within between 12 and 19 feet of the site along Lafayette Street; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority (NYCTA) has requirements for the design and construction of a temporary excavation support system at this location; and

WHEREAS, specifically, the requirements include that

piles must be drilled rather than driven and that the excavation support system must be laterally braced in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the applicant submitted an engineer's report in support of these assertions, which document the anticipated expenses of the noted supplemental measures; and

WHEREAS, further, the applicant notes that since such a large portion of the site has frontage on Lafayette Street, a large portion of the site is affected by the subway conditions; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram, which reflects that of the 40 lots within the radius with subway frontage, only two have a higher ratio of subway frontage to lot area; and

WHEREAS, as to the subsurface conditions, the applicant represents that removal and disposal of at least two or three underground storage tanks will be required; and

WHEREAS, additionally, the applicant represents that at least 40 percent of the soil volume to be excavated is expected to be regulated non-hazardous waste, which must be disposed of in a landfill; and

WHEREAS, the applicant documented the additional costs associated with the clean up of the site due to its historic use as a gasoline service station and an automotive repair facility; 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 applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as of right commercial building and an as of right hotel building; and

WHEREAS, the applicant concluded that such scenarios would result in a loss, due to the size of the lot, as well as premium construction costs associated with the irregular site conditions; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the

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applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of eight dwelling units and ground floor retail will not impact nearby conforming uses; and

WHEREAS, the applicant represents that the NoHo Historic District and the surrounding area are characterized by 19<sup>th</sup> Century retail and loft buildings, many of which are cast iron, and early 20<sup>th</sup> Century commercial buildings; and

WHEREAS, accordingly, the color, texture, and details of the proposed building were designed to be compatible with the context for cast iron facades and to emphasize the industrial quality of cargo containers in keeping with the industrial loft quality of the neighborhood; and

WHEREAS, the applicant represents that the building heights in the surrounding area range from four to eight stories and the adjacent property to the west is occupied by a six-story mixed-use building; and

WHEREAS, the applicant notes that since the adjacent property to the south is occupied by a one-story building, the proposed building will be clearly visible along Bond Street and the Landmarks Preservation Commission (LPC) requires that the exterior of that portion of the building also be designed to be compatible with the context of the neighborhood; and

WHEREAS, additionally, the applicant agreed to create a screen wall around the outdoor terrace space on the fifth and sixth floors in order to provide an uninterrupted street wall on Lafayette Street and Great Jones Street; and

WHEREAS, the applicant received a Certificate of Appropriateness from the LPC, dated March 23, 2007; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due in part to the historic widening of the street; and

WHEREAS, the Board observes that the proposed building of eight dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, the applicant states that the standard residential and commercial floor area in the building results in a total FAR of 5.0, but because the terrace on the fifth floor is partially enclosed in order to maintain the street wall, it counts as an additional 363 sq ft. of floor area and results in the proposed FAR of 5.12; and

WHEREAS, the Board notes that the proposed FAR is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; 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 (EAS) CEQR No. 07BSA034M, dated November 1, 2006; 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: (1) a November, 2006 Environmental Assessment Statement, (2) a October, 2005 Phase I Environmental Site Assessment and (3) a December 2005 Limited Phase II Environmental Site; and

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

WHEREAS, a Restrictive Declaration was executed on March 8, 2007 and submitted for recordation on March 12, 2007 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; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-5B zoning district within the NoHo Historic District, the construction of a six-story, eight-unit residential building with ground floor retail, which is contrary to ZR §§ 42-10 and 42-14, *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 November 1, 2006"—four (4) sheets and "Received March 6, 2007"—seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories, a total floor area of 15,556.5 sq. ft. (5.12 FAR), a residential floor area of 14,026 sq. ft. (4.62 FAR), a commercial floor area of 1,530.5 sq. ft. (0.50 FAR), a height of 70'-10 ¾", without bulkheads, and a total height of 79'-10 ¾", with bulkheads;

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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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, April 17, 2007.

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## 303-06-BZ

### CEQR #07-BSA-039R

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications, Inc., for Verrazano Garden Apartments, Inc., owner.

SUBJECT – Application November 14, 2006 – Special Permit 73-30: Install non-accessory 75' radio tower, with related equipment, on a portion of the property (Block 3107, Lot 12), a lot consisting of 51,458 SF, located in an R3-2 zoning district.

PREMISES AFFECTED – 1081 Tompkins Avenue, 220' north of Tompkins Avenue and Richmond Avenue, Block 3107, Lot 12, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Daniel Braff.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 31, 2006, acting on Department of Buildings Application No. 500812855, reads in pertinent part:

“Proposed monopole (Use Group 6) is . . . not allowable within R3-2 district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution.”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on March 13, 2007 after due notice by publication in *The City*

*Record*, and then to decision on April 17, 2007; and

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

WHEREAS, certain individuals who live in proximity to the proposed installation appeared in opposition to the proposed installation, alleging concerns about aesthetics and possible health hazards; and

WHEREAS, the Board appreciates the sincerity of the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law; and

WHEREAS, further, as discussed immediately below, the facility will be disguised to resemble a flag pole, in order to address concerns about aesthetics; and

WHEREAS, the proposed facility will be located on a portion of the subject premises currently covered with existing vegetation; some of this vegetation will be cleared and a concrete base pad will be installed; and

WHEREAS, the premises is also occupied by a 36-unit multiple dwelling; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a 75-ft. high monopole, as well as related cabinets at the base of the pole; the facility will be surrounded by a six-ft. high fence; and

WHEREAS, the proposed monopole has been designed to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 77 feet; and

WHEREAS, three small equipment cabinets and a battery cabinet will be located at the base of the flagpole; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.”; and

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

WHEREAS, the applicant also states that related equipment cabinets will be installed within a six-foot high opaque locked fence enclosure, as noted above; and

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

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that

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there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

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

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

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, 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. 07-BSA-039R, dated November 17, 2006; 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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §§ 73-03 and 73-30 to allow, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received November 17, 2006”–(6) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, April 17, 2007.

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## **334-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Machia Abramczyk, owner.

SUBJECT – Application December 29, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1119 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenue K and Avenue L, Block 7623, Lot 37, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 5, 2006, acting on Department of Buildings Application No. 302368800, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum rear yard of 30’.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

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

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

WHEREAS, the subject site is located on the east side of East 23rd Street, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a 2,725.43 sq. ft. (0.68 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,725.43 sq. ft. (0.68 FAR) to 4,016 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space from 2,532.72 sq. ft. to 2,190.04 sq. ft. (a minimum open space of 3,000 sq. ft. is required); and

WHEREAS, the proposed enlargement will increase the non-complying front yard from 2'-5" to 12'-5" (a minimum front yard of 15'-0" is required); and

WHEREAS, the proposed enlargement will provide a 20'-0" rear yard (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the building is not located within 20'-0" of the rear lot line; and

WHEREAS, the applicant initially submitted plans which provided for a home that encroached into the sky exposure plane; and

WHEREAS, at hearing, the Board asked the applicant to revise the plans so that there was no non-compliance as to the sky exposure plane; and

WHEREAS, the applicant revised the plans so as to comply with the requirements for the sky exposure plane except that a pre-existing non-complying condition which encroaches into the required setback will be maintained; and

WHEREAS, the Board also directed the applicant to maintain the front wall at the second floor; and

WHEREAS, at hearing the Board asked the applicant to establish a context for the building height; and

WHEREAS, in response, the applicant submitted information on three nearby buildings with heights ranging from 35'-6" to 38'-6"; and

WHEREAS, the Board notes that the proposed enlargement will result in a home with a perimeter wall height of 21'-10" and a total height of 35'-4", which is compatible with the homes nearby; and

WHEREAS, based upon its review of the record, 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, Board finds that the proposed project will

not interfere with any pending public improvement project; and

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

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

*Therefore it is Resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 3, 2007"-(5) sheets and "April 17, 2007"-(1) sheet; and *on further condition:*

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 470.12 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,016 sq. ft., a total FAR of 1.00, a perimeter wall height of 21'-10", a total height of 35'-4", a front yard of 12'-5", a rear yard of 20'-0", and open space of 2,190.04 sq. ft., as illustrated on the BSA-approved plans;

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, April 17, 2007.

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## 1-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Jacqueline Savio and Alfred Buonanno, owner.

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SUBJECT – Application January 2, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary (§23-141) in that the proposed building exceeds the maximum permitted floor area ratio of .75 in an R4-1 zoning district.

PREMISES AFFECTED – 1792 West 11<sup>th</sup> Street, West 11<sup>th</sup> Street between Quentin Road and Highlawn Avenue, Block 6645, Lot 46, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

### APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 18, 2006, acting on Department of Buildings Application No. 302263226, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.75.”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R4-1 zoning district, the proposed enlargement of a single-family semi-detached dwelling, which does not comply with the zoning requirements for floor area and FAR, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 20, 2007, after due notice by publication in *The City Record*, and then to decision on April 17, 2007; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of West 11th Street, between Quentin Road and Highlawn Avenue; and

WHEREAS, the subject site has a total lot area of 2,700 sq. ft., and is occupied by a 1,958 sq. ft. (0.73 FAR) single-family semi-detached 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 1,958 sq. ft. (0.73 FAR) to 2,813 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,025 sq. ft. (0.75 FAR); and

WHEREAS, the proposed enlargement will maintain the non-complying side yard of eight feet (one side yard with a width of ten feet is the minimum required) and the non-complying front yard of 5.6 feet (a front yard with a minimum depth of ten feet is required); and

WHEREAS, the proposed enlargement will provide a 26.13 ft. rear yard (no rear yard is required because the site is within 100 feet of a corner); and

WHEREAS, based upon its review of the record, 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, Board finds that the proposed project will not interfere with any pending public improvement project; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R4-1 zoning district, the proposed enlargement of a single-family semi-detached dwelling, which does not comply with the zoning requirements for floor area and FAR, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 3, 2007”–(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;  
THAT the floor area of the attic shall be limited to 633 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 2,813 sq. ft., a total FAR of 1.04, a perimeter wall height of 23’-6”, total height of 34’-6”, a front yard of 5.6 feet, a side yard of 8 feet, and a rear yard of 26.13 feet, as illustrated on the BSA-approved plans;

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

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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, April 17, 2007.

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### **378-04-BZ**

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

SUBJECT – Application November 29, 2004 – Variance (§72-21) to permit the construction of a four-story residential building and a four-car garage. The Premise is located on a vacant lot in an M1-1 zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 94 Kingsland Avenue, northeast corner of the intersection between Kingsland Avenue and Richardson Street, Block 2849, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for deferred decision.

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### **327-05-BZ**

APPLICANT– Rothkrug Rothkrug Weinberg & Spector, for John Damiano, owner.

SUBJECT – Application November 11, 2005 – Special Permit (§73-125) to allow a proposed ambulatory diagnostic treatment care facility (Use Group 4) limited to less than 10,000 sf of floor area to locate in an R3X district. The proposal calls for a one-story and cellar building and fourteen (14) accessory parking spaces.

PREMISES AFFECTED – 5135 Hylan Boulevard, between Wendy Drive and Bertram Avenue, Block 6499, Lot 95, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for decision, hearing closed.

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### **23-06-BZ**

APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.

SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (§24-35) and front yards (§24-34).

PREMISES AFFECTED – 150-62 78<sup>th</sup> Road, southwest corner of 153<sup>rd</sup> Street and 78<sup>th</sup> Road, Block 6711, Lot 84,

Borough of Queens.

### **COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 1:30 P.M., for continued hearing.

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### **25-06-BZ**

APPLICANT– Dominick Salvati and Son Architects, for Josef Packman, owner.

SUBJECT – Application February 14, 2006 – Variance (§72-21) to allow an eight (8) story residential building with ground floor community facility use to violate applicable regulations for dwelling unit density (§23-22), street wall height (§23-631 & §24-521), maximum building height (§23-631), front yard (§24-34), side yards (§24-35 and §24-551), FAR (§24-11, §24-162 and §23-141) and lot coverage (§23-141 and §24-11). Project is proposed to include 29 dwelling units and 31 parking spaces. R3-2 district.

PREMISES AFFECTED – 2908 Nostrand Avenue, Block 7690, Lots 79 and 80, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Peter Hirshman, Eliot Berry and Joe Packman.

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

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### **141-06-BZ**

APPLICANT– Eric Palatnik, P.C., for Congregation Tehilo Ledovid, owner.

SUBJECT – Application July 6, 2006 – Variance pursuant to §72-21 to permit the proposed three-story synagogue. The Premise is located in an R5 zoning district. The proposal includes waivers relating to floor area and lot coverage (§24-11); front yards (§24-34); side yard (§24-35); wall height and sky exposure plane (§24-521); and parking (§25-31).

PREMISES AFFECTED – 2084 60<sup>th</sup> Street, southwest corner of 21<sup>st</sup> Avenue and 60<sup>th</sup> Street, Block 5521, Lot 42, Borough of Brooklyn.

### **COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Eric Palatnik and Goldie Schick.

For Opposition: Leo Weinberger, Joseph Olivio, Natalie DeNicola, Vito Marinelli Jr., Joann Marinelli Jr., Walter Maffei, Loretta Oliva, Bill Finn, Rebecca Gray and Nicholas Shine.

**ACTION OF THE BOARD** – Laid over to April 17, 2007, at 1:30 P.M., for continued hearing.

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### **152-06-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Gregory Montalbano, owner.

SUBJECT – Application July 11, 2006 – Special Permit

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(§73-125) to allow the proposed two-story ambulatory diagnostic/treatment care facility containing 5,565 square feet of floor area and parking for fourteen vehicles. The Premise is located in an R3X zoning district. The proposal is contrary to §22-14.

PREMISES AFFECTED – 82 Lamberts Lane, southwest corner of Lamberts and Seldin Avenue, Block 1609, Lot 16, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

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**161-06-BZ**

APPLICANT– Eric Palatnik, P.C., for Webster Affordable Solutions, LLC, owner.

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.

PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

**COMMUNITY BOARD #7BX**

APPEARANCES –

For Applicant: Eric Palatnik, Richard Roberts and Tim Tlanacan.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

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**216-06-BZ**

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

SUBJECT – Application August 28, 2006 – Special Permit (§11-411 and §11-412) for the re-establishment and extension of term for an existing automotive service station, which has been in continuous operation since 1961 and legalization of certain minor amendments to previously approved plans. C1-4/R6-A zoning district.

PREMISES AFFECTED – 35-17 Junction Boulevard, east side of Junction Boulevard between 35<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1737, Lot 49, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

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**259-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application September 22, 2006 – Variance (§72-21) to permit the enlargement of an existing synagogue located in an R5 (OP) zoning district. The proposal is contrary to open space coverage (§24-11), side yards (§24-

35), front yards (§24-34), height and setback (§24-50 and §24-521), parking (§25-18 and §25-31), and front yard not fully landscaped (§113-30).

PREMISES AFFECTED – 1885-1891 Ocean Parkway, a/k/a 601 Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to May 15, at 1:30 P.M., for continued hearing.

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**264-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Schwartz and Michael Schwartz, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141(a)); lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1632 East 28<sup>th</sup> Street, East 28<sup>th</sup> Street between Avenue P and Quentin Road, Block 6790, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Jack H. Cooperman and Sol Mermelson.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

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**265-06-BZ**

APPLICANT– Sheldon Lobel, P.C., for Rev. Heung C. Rha, owner.

SUBJECT – Application September 28, 2006 – Variance (§72-21) to allow accessory use to U.G. 2 (multiple dwellings) on an R2 portion of a zoning lot split by district boundaries (R2 and R6); R6 portion of the lot will be developed with an as-of-right multiple dwelling and house of worship; contrary to use regulations (§ 22-00 and § 22-12).

PREMISES AFFECTED – 141-48 33<sup>rd</sup> Avenue, south side of 33<sup>rd</sup> Avenue between Parsons Boulevard and Union Street, Block 4981, Lot 37, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Marco Colon, Chuck Apelian of CB #7, Millicent O’Meally, Pauline Wilson, Patricia Vesseo and Christine Czarny.

**ACTION OF THE BOARD** – Laid over to May 22, at 1:30 P.M., for continued hearing.

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**279-06-BZ**

APPLICANT– Gerald J. Caliendo, R.A., AIA, for Richard N. Seemungal, owner.

SUBJECT – Application October 17, 2006 – Variance (§72-

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21) to construct a two story, two family residential building on a corner lot that does not comply with the front yard requirement (§23-45) and is less than the minimum required side yard (§23-461(b)) in an R4 zoning district.

PREMISES AFFECTED – 144-29 South Road, corner formed by the southeast side of South Road and Inwood Street, Block 10045, Lot 18, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Sandy Anagnostou.

For Opposition: Rene King.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for decision, hearing closed.

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**286-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Avrohom Horowitz, owner; Congregation Darkel Chaim, Inc., lessee.

SUBJECT – Application October 20, 2006 – Variance (§72-21) to permit the proposed two-story addition to the rear of the three-story structure which is currently under construction and to allow for the inclusion of a Use Group 4 synagogue at the premises. The premises is located in an R5 (Borough Park) zoning district. The proposal is contrary to floor area (§24-162a), side yards (§24-35), and the number of stories (§24-33).

PREMISES AFFECTED – 1847 60<sup>th</sup> Street, north side of 60<sup>th</sup> Street, between 18<sup>th</sup> Avenue and 19<sup>th</sup> Avenue, Block 5512, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Eric Palatnik and Peter Gee.

For Opposition: Rosanna LePiccolo.

**ACTION OF THE BOARD** – Laid over to May 22, 2007, at 1:30 P.M., for continued hearing.

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**315-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Merkaz, The Center, Inc., owner.

SUBJECT – Application December 6, 2006 – Variance (§72-21) to permit the proposed three-story religious-based pre-school, which will include an accessory synagogue. The premises is located within two zoning districts, an R5B and R2, with the vast majority (95%) resting within the R5B district. The proposal is contrary to §§24-11, 24-34, 24-35, 24-36 and 24-521.

PREMISES AFFECTED – 1739 Ocean Avenue, between Avenues L and M, Block 7638, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik, Jacob Fetman, Tammy Fetman, Lea Bruder and S. Octsh.

For Opposition: David Teichman, Chana Teichman, Sandy Kreitner, Edward Shusterman and Beth Rabiwzttl.

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 1:30 P.M., for continued hearing.

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**318-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Sun Company, Inc., owner.

SUBJECT – Application September 27, 2006 – Special Permit (§11-411) seeking to re-instate a previous BSA approval issued to the premises permitting the continued use as an automotive service station (use group 16) located in a R-4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, northeast corner of Astoria Boulevard and 49<sup>th</sup> Street, Block 1000, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 15, 2007, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: 6:45 P.M.*

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## \*CORRECTION

**This resolution adopted on February 27, 2007, under Calendar No. 27-96-BZ and printed in Volume 92, Bulletin Nos. 9-10, is hereby corrected to read as follows:**

### 27-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Matt Realty Corp., owner.

SUBJECT – Application October 23, 2006 – Extension of Term and Amendment for an existing Physical Cultural Establishment which was granted pursuant to §73-36 of the zoning resolution on October 16, 1996 and expired on October 16, 2006. The site is located in a C2-3/R5 zoning district.

PREMISES AFFECTED – 602-04 Coney Island Avenue, west side of Coney Island Avenue between Beverley Road and Avenue C, Block 5361, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

#### APPEARANCES –

For Applicant: Ron Mandel.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on October 16, 2006; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in *The City Record*, and then to decision on February 27, 2007; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the west side of Coney Island Avenue between Beverly Road and Avenue C; and

WHEREAS, the site has a lot area of approximately 5,100 sq. ft. and is located within a C2-3 (R5) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a portion of the first floor and mezzanine; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years; and

WHEREAS, the instant application seeks approval of interior layout modifications including the rearrangement of the

eating and drinking area, the relocation of the sauna, steam room and shower, and the enlargement of the men’s locker room; and

WHEREAS, the applicant also requests a ten-year extension of term for the special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested interior modifications and 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, *reopens*, and *amends* the resolution, dated October 16, 1996, so that as amended this portion of the resolution shall read: “to grant approval of a the requested layout modifications and an extension of the term for a term of ten years from the expiration of the last grant to expire on October 16, 2016; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received January 12, 2007’–(3) sheets and ‘October 23, 2006’–(1) sheet; and *on condition*:

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

THAT this grant shall be limited to a term of ten years to expire on October 16, 2016;

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

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. 300326895)

Adopted by the Board of Standards and Appeals, February 27, 2007.

**\*The resolution has been corrected in the part of the plans date, which read: ‘Received January 10, 2007’–(4) sheets.. reads: ‘January 12, 2007’–(3) sheets and ‘October 23, 2006’–(1) sheet...’. Corrected in Bulletin No. 16, Vol. 92, dated May 3, 2007.**