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# BULLETIN

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

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May 3, 2007

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### DIRECTORY

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# DOCKET

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**84-07-A**

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**85-07-A**

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**88-07-BZ**

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**91-07-A**

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**92-07-A**

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**93-07-A**

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**94-07-A**

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**95-07-A**

281 Oakland Street, Between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5283, Lot(s) 2, Borough of **Staten Island**, **Community Board: 3**. General City Law Section 35-Proposed development.  
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# DOCKET

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**96-07-A**

41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lot(s) 48,50, Borough of **Queens, Community Board: 4.** Appeal-Legalization of required side setback pursuant to Section 23-661, Z.R; the applicable provision, in lieu of Section 24-551; incorrectly cited by the Department of Buildings.

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**97-07-BZ**

80-16 Cooper Avenue, Southerly side of Cooper Avenue and the easterly side of 80th Street., Block 3810, Lot(s) 350, Borough of **Queens, Community Board: 5.** (SPECIAL PERMIT) 73-36-To allow the operation of a Physical Culture Establishment on the second floor of a two story commercial building contained within a commercial mall complex.

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**98-07-BZ**

67 Amherst Street, North of Hampton Avenue, south of Shore Boulevard., Block 8727, Lot(s) 38, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT)73-622-To vary 23-141 (floor area ratio, open space, lot coverage). 23-47 (rear yard) and 23-461(side yards) for proposed residential dwelling..

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**99-07-BZ**

170 Girard Street, North of Oriental Boulevard, south of Hampton Avenue., Block 8749, Lot(s) 271, Borough of **Brooklyn, Community Board: 15.** (SPECIAL PERMIT) 73-622-For proposed enlargement of a residential 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 22, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 22, 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**

**135-67-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Avenue “K” Corp., owner.

SUBJECT – Application April 3, 2007 – Extension of Term of a gasoline service station with minor auto repairs (Exxon) for 10 years which will expired on October 11, 2007 in an R3-2 zoning district.

PREMISES AFFECTED – 2063/91 Ralph Avenue, northwest corner of Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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**90-95-BZ**

APPLICANT – Cozen O’Connor by Barbara Hair, Esq., for 641 LLC, owner; Bally Total Fitness, lessee.

SUBJECT – Application November 6, 2006 – Extension of Term and waiver of the rules for a Special Permit (ZR 73-36) to allow a Physical Cultural Establishment (Bally’s) in a C6-3A/C6-2A zoning district which expired on December 5, 2005.

PREMISES AFFECTED – 641 6<sup>th</sup> Avenue, southwest corner of intersection of West 20<sup>th</sup> Street and 6<sup>th</sup> Avenue, Block 795, Lot 44, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**189-96-BZ**

APPLICANT – John C. Chen, for Ping Yee, owner; Edith D’Angelo-CNandongga, lessee.

SUBJECT – Application March 14, 2007 – Extension of Term for a Special Permit (73-244) for a UG12 eating and drinking establishment with entertainment and dancing (Flamingos) in an C2-3/R-6 zoning district; and to increase the number of occupancy from 190 to 200 which will expired on May 19, 2007.

PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue, 58’ east side of Forley Street, Block 1502, Lot 3, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**199-00-BZ, Vol. III**

APPLICANT – John C. Chen, for En Ping, Ltd., owner; Valentin E. Partner Atlantis, lessee.

SUBJECT – Application February 23, 2007 – Extension of Term of a Special Permit (73-244) for a UG12 eating and

drinking establishment (Club Atlantis) in a C2-3/R-6 zoning district which expired March 13, 2007.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, northwest corner of Roosevelt Avenue and 77<sup>th</sup> Street, Block 1287, Lot 37, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**142-06-A thru 148-06-A**

APPLICANT – Sheldon Lobel, P.C., for Ideal Development Group, Ltd., lessee.

SUBJECT – Application July 6, 2006 – Proposed construction of four two- family homes and three three-family homes located partially within the bed of an unnamed mapped street which is contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 3209 Tiemann Avenue, t/b/k/a 1651, 1655, 1661, 1665, 1671, 1675 Burke Avenue, 3215 and 3225 Tiemann Avenue, Block 4752, Lots 173, 175, 182, t/b/k/a New Lots 170, 171, 172, 174, 176, 177, 178 & 180, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**326-06-A**

APPLICANT – David L. Businelli, R.A., for Oleg Amayev, owner.

SUBJECT – Application December 20, 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 R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

PREMISES AFFECTED – 1523 Richmond Road, north side of Richmond Road, 44.10’ west of Forest Road and Richmond Road, Block 870, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**81-07-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Christine & James Pastore, lessee.

SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family dwelling and the upgrade of an existing non-conforming private disposal system not fronting on a mapped street which is contrary to Article 3, Section 36 of the General City Law. R4 Zoning district.

PREMISES AFFECTED – 10 Courtney Lane, south side of Courtney Lane, 177.31’ east of Beach 203<sup>rd</sup> Street, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**83-07-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point

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# CALENDAR

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Cooperative, owner; Joseph Adinolfi, lessee.  
SUBJECT – Application April 17, 2007 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.  
PREMISES AFFECTED – 134 Ocean Avenue, west side of Ocean Avenue, 143.88’ south of mapped 8<sup>th</sup> Avenue, Block 16350, Lot p/o400, Borough of Queens.  
**COMMUNITY BOARD #14Q**  
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**MAY 22, 2007, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 22, 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

### **254-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Sarah Weiss, owner.  
SUBJECT – Application September 18, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (23-141(a)) and side yard (23-461) in an R-2 zoning district.  
PREMISES AFFECTED – 1327 East 21<sup>st</sup> Street, corner of Avenue L and East 21<sup>st</sup> Street, Block 7639, Lot 41, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**  
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### **314-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Mikhail Kremerman, owner; Yana’s Spa, lessee.  
SUBJECT – Application December 6, 2006 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment (aka spa) at the cellar level of the proposed structure.  
PREMISES AFFECTED – 2565 East 17<sup>th</sup> Street, Block 7438, Lot 51, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**  
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### **321-06-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Park Towers South Company LLC, owner; Yelo, LLC, owner.  
SUBJECT – Application December 13, 2006 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment in a portion of the first floor of a multi-story mixed use building.  
PREMISES AFFECTED – 315 West 57<sup>th</sup> Street, north side of West 57<sup>th</sup> Street, 200’ west of Eighth Avenue, Block

1048, Lot 20, Borough of Manhattan.  
**COMMUNITY BOARD #4M**  
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### **43-07-BZ**

APPLICANT– Kramer Levin Naftalis & Frankel, LLP, for Covenant House, owner; Hampshire House Hotels & Resorts, lessee.  
SUBJECT – Application February 8, 2007 – Zoning variance under § 72-21 to allow a proposed twelve (12) story mixed-use development containing seventy-four (74) apartment hotel rooms (U.G. 2), two-hundred and seventy (270) transient hotel rooms (U.G. 5) and retail use (U.G. 6) and/or a physical culture establishment (PCE) on the ground and cellar levels. Proposed commercial uses (transient hotel, retail and PCE) are contrary to use regulations (§ 22-00). Proposed apartment hotel rooms exceed maximum number of dwelling units (§ 23-22) and are contrary to recreation requirements of the Quality Housing Program (§ 28-32). Proposed development would also violate regulations for floor area (§ 23-145), lot coverage (§ 23-145), rear yard for interior portion of lot (§ 23-47), rear yard equivalent for through lot portion (§ 23-533), height and setback (§ 23-633), and location requirements for outdoor swimming pool (§ 12-10).  
PREMISES AFFECTED – 346-360 West 17<sup>th</sup> Street, aka 351-355 West 16<sup>th</sup> Street, Block 740, Lot 55, Borough of Manhattan.  
**COMMUNITY BOARD #4M**  
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### **57-07-BZ**

APPLICANT – Omnipoint Communications, Inc., for Wagner College, owner.  
SUBJECT – Application March 5, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communications facility and will consist of a 70-foot monopole/light-post, together with antennas (and stadium flood-lights).  
PREMISES AFFECTED – 636 Howard Avenue, 75’ east of Highland Avenue and Howard Avenue, Block 597, Lot 65, Borough of Staten Island.  
**COMMUNITY BOARD # 1SI**  
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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, APRIL 24, 2007  
10:00 A.M.**

Present: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.  
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**SPECIAL ORDER CALENDAR**

**81-74-BZ**

APPLICANT – Martyn & Don Weston, for Bogopa Supermarket, Inc., owner; Food Bazaar Supermarket; lessee.  
SUBJECT – Application January 29, 2007 – Extension of Term of a previously granted variance for the operation of a Use Group 6 (Food Bazaar Supermarket) in a C1-2/R6A & R6B zoning district which expired on February 27, 2007.  
PREMISES AFFECTED – 97-27 57<sup>th</sup> Avenue, north side between 97<sup>th</sup> Place and 98<sup>th</sup> Street, Block 1906, Lot 1, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Don Weston.

**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 term for a supermarket and accessory parking lot, which expired on February 27, 2007; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in the *City Record*, and then to decision on April 24, 2007; and

WHEREAS, Community Board 4, Queens, recommends approval of this application citing concerns about bottle return policies, the maintenance of the site, and to avoid blocking the store’s aisles; the Community Board recommends that the term be limited to three years; and

WHEREAS, City Council Member Helen Shears recommends approval of this application; and

WHEREAS, the site occupies the entire block front on the north side of 57<sup>th</sup> Avenue, from 97<sup>th</sup> Place to 98<sup>th</sup> Street and is partially within a C1-2 (R6A) zoning district and partially within an R6B zoning district; and

WHEREAS, the site is improved upon with a supermarket and accessory parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1962 when, under BSA Cal. No. 549-61-BZ, the Board granted a variance for the construction of a building for commercial use in a residential district; and

WHEREAS, on June 25, 1974, under the subject calendar number, the Board granted an application to permit, on a site

which was then partially within a C1-3 zoning district and partially within an R6 zoning district (the site has since been rezoned), the construction of a one-story enlargement to the existing supermarket; and

WHEREAS, subsequently, the term was extended by the Board twice; and

WHEREAS, most recently, on July 13, 1999, the term was extended, to expire on February 27, 2007; and

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

WHEREAS, the applicant represents that there have not been any changes to the site since the prior approval; and

WHEREAS, at hearing, the applicant addressed the Community Board’s concerns and agreed to modify its bottle collection policy and better maintain the site; and

WHEREAS, the Board notes that of the Community Board’s concerns, only the maintenance of the site is within its purview; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens*, and *amends* the resolution, as adopted on June 25, 1974, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 27, 2007 to expire on February 27, 2017, *on condition* that the use shall substantially conform to the approved drawings; and *on further condition*:

THAT the term of this grant shall expire on February 27, 2017;

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

THAT the site shall be maintained free of debris;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 402523827)

Adopted by the Board of Standards and Appeals, April 24, 2007.  
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**163-04-BZII**

APPLICANT – Rothkrug Rothkrug & Spector, for Mylaw

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# MINUTES

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Realty Corp., owner; Crunch Fitness, lessee.

SUBJECT – Application August 28, 2006 – Amendment of a special permit (§73-36) to allow the enlargement and expansion of an existing physical culture establishment into an adjoining building, and to reflect a change in the name of the operator. C2-4(R6) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of Fulton Street and St. Felix Street, Block 2096, Lots 66 and 69, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Adam Rothkrug.

**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 amendment to a previously granted special permit for a Physical Culture Establishment (PCE); and

WHEREAS, a public hearing was held on this application on April 10, 2007 after due notice by publication in *The City Record*, and then to decision on April 24, 2007; and

WHEREAS, the subject premises is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R6) zoning district; and

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

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor and mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2005; and

WHEREAS, the approved plans provide for the occupancy of 5,692 sq. ft. of space in the cellar and 9,206 sq. ft. of floor area on the first floor; and

WHEREAS, the applicant now proposes to enlarge the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building; and

WHEREAS, the applicant represents that the adjacent building is under common ownership and that an interior connection between the two buildings will be created; and

WHEREAS, the applicant also proposes to extend the hours to 24 hours a day; and

WHEREAS, at hearing, the Board asked the applicant whether the large sign painted on the wall was complying; and

WHEREAS, in response, the applicant submitted photographs, which reflect that the sign has been removed; and

WHEREAS, lastly, although the applicant represents that, they were offered on a temporary basis, massages are not currently offered at the PCE; and

WHEREAS, the applicant agrees that if the PCE decides to offer massages in the future, only licensed massage therapists will be permitted to provide them; and

WHEREAS, based upon its review of the record, the Board finds that the requested enlargement and change of hours is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 12, 2005, so that as amended this portion of the resolution shall read: “to grant approval of a the requested enlargement; *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 August 28, 2006’-(4) sheets and ‘December 29, 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 all massages shall be performed only by New York State licensed massage professionals;

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

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

THAT all 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, April 24, 2007.

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**133-94-BZ**

APPLICANT – Alfonso Duarte, for Barone Properties, Inc., owner.

SUBJECT – Application November 23, 2005 – Pursuant to ZR §11-411 and §11-413 for the legalization in the change of use from automobile repair, truck rental facility and used car sales (UG16) to the sale of automobiles (UG8) and to extend the term of use for ten years which expired on September 27, 2005. The premise is located in a C1-2/R2 zoning district.

PREMISES AFFECTED – 166-11 Northern Boulevard,

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# MINUTES

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northwest corner of 167<sup>th</sup> Street, Block 5341, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

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**346-98-BZ**

APPLICANT – Vito J. Fossella, P.E., for Amboy Service Station, Inc., owner.

SUBJECT – Application June 26, 2006 – To reinstate an expired amendment granted on October 12, 1999 to permit the proposed conversion of an existing building accessory to a gasoline service station, into a convenience store, by enlarging the existing building and eliminating the use of the lubricatorium, car wash, motor adjustments and minor repairs, as well as the relocation and increase in the number of pump islands from two to four, with a metal canopy over the new pump islands; an extension of Time to obtain a Certificate of Occupancy and a waiver of the rules in an R3-2 (South Richmond) zoning district.

PREMISES AFFECTED – 3701 Amboy Road, Block 4645, Lot 140, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

**ACTION OF THE BOARD** – Laid over to June 5, 2007, at 10 A.M., for continued hearing.

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**592-71-BZ**

APPLICANT – Vito J. Fossella, P.E., for FSD Realty, LLC, owner.

SUBJECT – Application February 2, 2007 – Extension of Term of a previously granted variance for the operation of (UG6) professional office building in an R3-2 & R-2 zoning district which expired on February 15, 2007; and for the extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 1010 Forest Avenue, south side of Forest Avenue, Block 316, Lot 27, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

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

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**72-96-BZ, Vol. II**

APPLICANT – The Law Office of Fredrick A. Becker, for 30 WS LLC, for New York Sports Club, lessee.

SUBJECT – Application December 29, 2006 – Extension of Term/Amendment-To allow the operation of a Physical Culture Establishment/Health Club on portions of the cellar, first floor, first floor mezzanine, second floor and third floor

of the existing twelve story commercial building located in a C5-5 (LM) zoning district. The application seeks to amend the hours of operation previously approved by the board.

PREMISES AFFECTED – 30 Wall Street, north side of Wall Street, 90' east of Nassau Street, Block 43, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 8, 2007, at 10 A.M., for decision, hearing closed.

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**10-01-BZ**

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

SUBJECT – Application March 14, 2007 – Extension of Time to complete construction and a waiver of the rules for a Variance (§72-21) to permit, in an R-5 zoning district, the proposed development of a one story building to be used as four retail stores (Use Group 6) which expired July 10, 2005.

PREMISES AFFECTED – 85-28/34 Rockaway Boulevard, southwest corner of the intersection formed between Rockaway Boulevard and 86<sup>th</sup> Street, Block 9057, Lots 27 and 33, Borough of Queens.

**COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

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 8, 2007, at 10 A.M., for decision, hearing closed.

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**83-02-BZ, Vol. II**

APPLICANT – Law Offices of Howard Goldman, for Big Sue LLC, owner.

SUBJECT – Application March 21, 2007 – Extension of Time to Complete Construction for a Variance to permit in an M1-1 zoning district, the proposed conversion of a four-story industrial building into a residential building with 34 units which expired on February 25, 2007.

PREMISES AFFECTED – 925 Bergen Street, bounded by Classon and Franklin Avenues, Block 1142, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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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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## APPEALS CALENDAR

### 54-05-A

APPLICANT – NYC Department of Buildings.

OWNER OF PREMISES: Yeshiva Imrei Chaim Viznitz.

SUBJECT – Application March 4, 2005 – Application to  
revoke Certificate of Occupancy No. 300131122, on the  
basis that the Certificate of Occupancy allows conditions at  
the subject premises that are contrary to the Zoning  
Resolution and the Administrative Code.

PREMISES AFFECTED – 1824 53<sup>rd</sup> Street, southeast  
corner of 18<sup>th</sup> Avenue, Block 5480, Lot 14, Borough of  
Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Angelina Martinez-Rubio.

**ACTION OF THE BOARD** – Appeal granted

THE VOTE TO GRANT –

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

Recused: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the Department of Buildings (“DOB”) seeks to modify Certificate of Occupancy Number 300131122 (the “Current CO”), issued to the subject premises on May 26, 1999, on the basis that it improperly authorizes a non-conforming commercial use that had been discontinued for over two years in a building located in an R5 zoning district; and

WHEREAS, the Current CO reflects the following uses: (i) Use Group (“UG”) 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

WHEREAS, the premises is owned and occupied by the Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter, the “Yeshiva”), and is improved upon with a three-story plus cellar building (the “New Building”); and

WHEREAS, the New Building currently contains a UG 3 religious school for approximately 625 boys, a UG 4 synagogue space, and a UG 9 catering establishment that serves the needs of the broader orthodox Jewish community in the vicinity of the site, located in the cellar; and

WHEREAS, when this application was originally filed, DOB sought a full revocation on the Current CO, based on concerns about bulk non-compliances; and

WHEREAS, a public hearing was held on the originally-

filed version of the application on May 17, 2005, after due notice by publication in the *City Record*, and was then scheduled for a continued hearing on July 12, 2005; and

WHEREAS, however, before this hearing, the Yeshiva obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings; and

WHEREAS, this court order also directed the Yeshiva to file a variance application at the Board for the UG 9 catering use; and

WHEREAS, the Yeshiva filed such an application under BSA Cal. No. 290-05-BZ; and

WHEREAS, the Yeshiva also filed an appeal of a DOB determination that the UG 9 catering use was not a UG 3 school or UG 4 synagogue accessory use, under BSA Cal. No. 60-06-A; and

WHEREAS, since the two matters were filed at the same time and both concerned the use of the New Building’s cellar for non-conforming commercial catering purposes, the Board, with the consent of all parties, heard the cases together; and

WHEREAS, through resolutions dated January 9, 2007, the Board denied both the variance application and the interpretive appeal; and

WHEREAS, these decisions are now the subject of a legal challenge; and

WHEREAS, subsequent to these denials, the Board was again permitted to hear DOB’s application concerning the Current CO; and

WHEREAS, by letter dated February 27, 2007, DOB amended its application such that it now seeks a modification of the Current CO to eliminate the UG 9 catering use listing at the cellar level; and

WHEREAS, however, in its most recent submission, dated April 17, 2007, DOB suggests that it may wish to revisit in the future the validity of the Current CO in its entirety; and

WHEREAS, specifically, DOB notes that during the course of this proceeding, counsel for the Yeshiva admitted in a submission that the one-story building that used to exist on the site (the “Prior Building”) was completely demolished, with all existing walls removed; and

WHEREAS, DOB claims that the Yeshiva, when pursuing permits that ultimately led to the issuance of the Current CO, never revealed this fact; and

WHEREAS, therefore, DOB states that it reserves the right to pursue a full revocation in the future, though it understands that the Board will proceed to decision on the cellar use issue since the hearing was closed and a decision date was set; and

WHEREAS, the Board agrees that while a full revocation is no longer sought in the current application, the decision reflected herein is without prejudice to further DOB enforcement action regarding the premises, including future applications to further modify or revoke the Current CO; and

WHEREAS, the premises, although currently located in an R5 zoning district, has a history of commercial use; and

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WHEREAS, specifically, the record reflects that a certificate of occupancy was issued on July 29, 1927 authorizing a public garage in the Prior Building; and

WHEREAS, DOB states that the Prior Building was converted to a motor vehicle repair shop (the "Repair Shop") in 1931, and a certificate of occupancy was issued on April 25, 1939 listing this use; and

WHEREAS, the record reflects that on May 27, 1958, the Board granted a use variance for a term of three years to allow the storage and shipping of U.S. servicemen's belongings in addition to the Repair Shop; and

WHEREAS, DOB states that on September 8, 1961, it issued another CO that indicates that the use of the premises reverted back to solely the Repair Shop; and

WHEREAS, DOB represents that the Repair Shop became a lawful, non-conforming UG 16 use in a residential district upon adoption of the revised Zoning Resolution in 1961; and

WHEREAS, DOB further represents that Z.R. § 52-332, a provision in the 1961 Zoning Resolution, allows a non-conforming UG 16 motor vehicle repair shop use to partially change to another UG 16 use as-of-right; and

WHEREAS, however, despite the existence of Z.R. § 52-332 in the 1961 Zoning Resolution, the record reflects that the Board re-opened the 1958 variance and issued a second variance on April 13, 1962, permitting the Prior Building to include a UG 16 storage garage as well as the Repair Shop; and

WHEREAS, the Board agrees with DOB that this 1962 variance is a nullity, since at the time of the second variance grant the applicant could have proceeded as-of-right at DOB to legalize the storage garage use; no variance was authorized since there was no non-compliance with the ZR; and

WHEREAS, thus, at this time, the Repair Shop and garage were lawful non-conforming uses by virtue of the zoning change, rather than Board-granted uses; and

WHEREAS, DOB represents that another CO was issued on October 21, 1965 listing both the Repair Shop and the garage use; and

WHEREAS, the Repair Shop use apparently continued at the premises for a period of time thereafter, under particular ownership and within the Prior Building; and

WHEREAS, however, the record indicates that a new owner purchased the Prior Building and held it during a period lasting from approximately 1982 to 1992; and

WHEREAS, certain neighbors to the site testified at hearing that during the time of this new ownership, no repair business operated at the site; in fact, one of the neighbors testified that the property was used for the storage of furniture; and

WHEREAS, the record indicates that on December 16, 1991, the Yeshiva, after purchasing the site, filed a permit application with DOB to change the occupancy of the Prior Building to a UG 3 school, a conforming use in an R5 district, as well as to relocate partitions and install a curb cut; DOB approved the application and issued a work permit on

November 4, 1992; and

WHEREAS, DOB states that its records indicate that from December 1990 through July 1998, the premises was not operated as a Repair Shop or any other commercial use, but instead was either vacant or undergoing intermittent construction; and

WHEREAS, DOB further states that the Yeshiva filed several post-approval amendments ("PAAs") between July of 1995 and March of 1998, seeking to extend the cellar and add a second and third story to the building for use as a conforming synagogue and school; and

WHEREAS, none of the PAAs during this time period proposed a non-conforming UG 9 catering use; and

WHEREAS, DOB denies that it approved any of the PAAs; and

WHEREAS, however, the record reflects that a temporary certificate of occupancy ("TCO") was issued by DOB for a three-story building on July 29, 1998, authorizing a UG 4 assembly hall and kitchen in the cellar, a UG 4 synagogue and UG 3 classrooms on the first and second floors, and UG 3 classrooms on the third floor; and

WHEREAS, this July 1998 TCO only authorized conforming uses; no authorization for the UG 9 catering use was given, since the Yeshiva never proposed it; and

WHEREAS, in a letter dated August 26, 1998, a DOB Deputy Commissioner stated that he had no objection to the filing of a PAA requesting that the use schedule be amended to add a UG 9 catering establishment; and

WHEREAS, DOB suggests that this August 26 letter is merely an invitation to apply for such an amendment, rather than confirmation that such an amendment was approvable or lawful; and

WHEREAS, the Board has reviewed the letter and agrees with DOB; and

WHEREAS, the context of the letter indicates that the Deputy Commissioner was responding to a request for permission to make such a filing, as evidenced by the reference to consideration of the short time the July 29 TCO had been in effect and then the statement "this office has no objection to the filing of" a PAA; and

WHEREAS, in other words, the letter is merely an authorization to proceed with a PAA, rather than a binding conclusion based on submitted evidence that the addition of the non-conforming use was justified; and

WHEREAS, all of the Board members, and, in a prior position, an individual commissioner (specifically, Commissioner Hinkson, a former DOB commissioner), have reviewed numerous DOB determinations, and are familiar enough with them to distinguish between an actual DOB substantive conclusion about a zoning issue and a mere authorization to submit an application for a permit amendment; and

WHEREAS, the record reveals that after the PAA application was made, the Yeshiva obtained TCOs reflecting the UG 9 catering use in the cellar on September 28, 1998 and

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December 29, 1998; and

WHEREAS, DOB states that an audit conducted on May 29, 2002 revealed that the PAAs that precipitated the issuance of these TCOs were approved in error; accordingly, the PAAs were marked disapproved and returned to the owner; and

WHEREAS, DOB subsequently sent out a letter revoking the underlying permit on October 17, 2002; and

WHEREAS, DOB's primary argument is that the prior non-conforming UG 16 use was discontinued pursuant to ZR § 52-61; and

WHEREAS, Z.R. § 52-61 provides, in pertinent part, "If, for a continuous period of two years . . . the active operation of substantially all of the non-conforming uses in any building . . . is discontinued, such . . . building . . . shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing."; and

WHEREAS, because the Current CO lists UG 9 catering at the cellar level in apparent reliance upon the prior UG 16 Repair Shop use, DOB further argues that the Current CO should be modified to remove this listing; and

WHEREAS, in support of its discontinuance argument, DOB submitted inspection reports from December 1990 and March 1991 that state that the Prior Building was vacant and the front entrance doors were masonry sealed; and

WHEREAS, DOB also cited to the Yeshiva's application to change the Prior Building to a conforming UG 3 use; and

WHEREAS, further, DOB submitted telephone book reports as evidence that there was no telephone line at the building from 1992 to 1997, a fact that DOB asserts is inconsistent with the active operation of a commercial motor vehicle repair shop; and

WHEREAS, additionally, DOB submitted a violation dated August 2, 1995 that states that the owner failed to provide required fencing during construction and that the entire premises was excavated approximately 16-feet deep; and

WHEREAS, DOB concludes that since the active operation of the non-conforming UG 16 use at the premises was discontinued for more than two years, the premises could only be used for a conforming use thereafter, and a UG 9 catering use is not a conforming use in an R5 zoning district; and

WHEREAS, the Board has reviewed the evidence submitted by DOB in support of its claim of discontinuance and finds it sufficient and credible; and

WHEREAS, there is no evidence in the record contradicting DOB's submitted records with respect to discontinuance of the non-conforming Repair Shop use; and

WHEREAS, nor did the Yeshiva attempt to argue that the Repair Shop in fact remained in active operation while the Prior Building was removed and the new three-story with cellar building was constructed; and

WHEREAS, accordingly, the Board finds that for a period of at least two years, the active operation of the lawful non-conforming use of the first floor of the Prior Building as a

UG 16 use had been discontinued; and

WHEREAS, consequently, the UG 9 catering use listing on the Current CO is in error and the CO must be modified to eliminate it; and

WHEREAS, the Yeshiva makes the following arguments in opposition: (1) that the filing of the initial permit application in 1991 – which sought only to change the occupancy of the one-story building to a UG 3 school, as well as to relocate partitions and install a curb cut – tolled the discontinuance period of ZR § 52-61; (2) the evidence of discontinuance is not compelling; (3) DOB should be prohibited from pursuing this application based upon the equitable defense of laches; (4) DOB should be estopped from pursuing this application; and

WHEREAS, as to the first argument, the Yeshiva claims that it has been DOB's long-standing policy to toll the two-year discontinuance period of ZR § 52-61 upon the filing of any permit for construction at the premises; and

WHEREAS, however, the Yeshiva fails utterly to cite to a single instance of the application of this alleged policy, nor is there any indication of such policy in any DOB procedure notice, letter, rule or directive that the Board is aware of; and

WHEREAS, further, the Board observes that the ZR contains no provision that codifies such a policy; and

WHEREAS, in fact, DOB disclaims such policy, explaining that at most it would allow a valid building permit to toll the discontinuance of a non-conforming use "only when the work is necessary to resume the non-conforming use or when a permit for legally mandated work on the non-conforming use prevents the continuance of the non-conforming use during the pending construction"; and

WHEREAS, here, the Yeshiva's 1991 permit application was for a change to a conforming use only; there was no application for retention of the UG 16 Repair Shop use, nor was there an application for a change in use to UG 9 catering; and

WHEREAS, these facts do not indicate that the proposed work was necessary to resume the non-conforming use, nor do they indicate that the permitted work was related to the non-conforming use; and

WHEREAS, the Board agrees that there is no preservation of the ability to maintain a prior non-conforming use or to change to another non-conforming use when there has been a two year or more discontinuance of such, pursuant to ZR § 52-61; and

WHEREAS, here, the Yeshiva did not initiate an application to modify the 1992 permit to propose a UG 9 use until approximately six years later, a period of time in which there was an actual discontinuance of the UG 16 use for a period of two years or more; and

WHEREAS, in fact, the Yeshiva went so far as to obtain a TCO that listed only conforming uses; and

WHEREAS, the Board finds it absurd to argue that the right to include a UG 9 catering establishment at the premises was preserved after the New Building was authorized for occupancy by only conforming uses, especially in light of the

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actual discontinuance; and

WHEREAS, the Yeshiva was unable to cite to any DOB or BSA precedent where in support of its argument; and

WHEREAS, as a supplement to its argument that DOB's policy is toll the discontinuance period upon issuance of any permit, the Yeshiva cites to Hoffman v. Board of Zoning and Appeals of Russell Gardens, 155 A.D.2d 600 (2<sup>nd</sup> Dep't, 1989); and

WHEREAS, in the Hoffman case, the court held that where a lawful non-conforming restaurant suffered fire damage and the owner filed to reconstruct the restaurant, the applicable non-conforming use discontinuance provision would be tolled while the restaurant underwent reconstruction and was not open for business; and

WHEREAS, DOB responds that it has not applied Hoffman broadly to non-fire damaged buildings, and it would expect, as occurred in Hoffman, that the permit applicant apply for a permit to reconstruct the non-conforming use within the tolling period; and

WHEREAS, the Board also agrees that Hoffman must be applied with some common sense, and approves of the approach proposed by DOB; and

WHEREAS, here, the Yeshiva's course of action during the permitting and construction process is not similar to what occurred in Hoffman: the building was not fire damaged and there was no permit filing for reconstruction of the non-conforming use until after the tolling period had expired and the non-conforming use was discontinued for two years of more; and

WHEREAS, unlike in Hoffman, the Yeshiva sought approval only for conforming uses, and demolished the Prior Building and constructed the New Building in furtherance of that goal;

WHEREAS, accordingly, the Board finds that the Yeshiva's reliance upon Hoffman for its tolling argument is misplaced and the arguments based on the case are without merit; and

WHEREAS, the Yeshiva contends, however, that to the extent the Board is concluding that an intent to maintain the non-conforming use must be evident from the initial permit or permit application, as was the case

in Hoffman, such conclusion is contrary to law; and

WHEREAS, the Yeshiva cites to Matter of Toys "R" Us v Silva, 89 NY2d 411 (1996) in support of this argument; and

WHEREAS, the Yeshiva argues that the Toys "R" Us decision stands for the proposition that this Board may not consider the initial intent as expressed by the 1991 permit application when determining whether the two year period of ZR § 52-61 commenced or was tolled; and

WHEREAS, the Board observes, however, that the Toys "R" Us court, in its discussion of ZR 52-61, was addressing that part of the provision that reads: "An intent to resume active operations" shall not affect a determination that actual discontinuance of a non-conforming use mandates that the land only be used for conforming uses thereafter; and

WHEREAS, it is clear that the court was addressing the possibility that a property owner might somehow memorialize an intent to resume a non-conforming use but not actually engage in that non-conforming use; and

WHEREAS, the court merely observed that ZR § 52-61 would not allow consideration of such intent; the only consideration is actual cessation of use; and

WHEREAS, applying this observation here, the Board concludes that the Yeshiva is not entitled to reinstatement of the UG 16 use or the change to UG 9 use, since there was an actual cessation of use for more than the two year time period set forth in ZR 52-61; and

WHEREAS, in fact, the Toys "R" Us decision does not pertain to or even touch upon the argument presented here, which is that the filing of a permit tolls the ZR 52-61 discontinuance period; and

WHEREAS, when this argument is made, this Board may conclude that the intent reflected in the Yeshiva's permit is in fact relevant, since the reflected intent is to abandon the non-conforming use; and

WHEREAS, the Board notes that ZR §52-61 only provides that an intent to resume a non-conforming use is not relevant; it does not say that an intent to abandon non-conforming use is never relevant; and

WHEREAS, in light of the Yeshiva's argument about the permit issuance tolling the discontinuance period, the Board concludes that an examination of the permit is relevant; and

WHEREAS, in sum, since there was actual discontinuance of the UG 16 use, an application of Toys "R" Us dictates and ZR 52-61 dictates that there was no right to the UG 16 use nor the change to the UG 9 catering use in 1998; and

WHEREAS, regardless of the Yeshiva's tolling argument, the Board observes that the Yeshiva had absolutely no right whatsoever to accommodate the UG 9 catering use in the New Building, since it reflects, at a minimum, a structural alteration of the Prior Building; and

WHEREAS, pursuant to ZR § 52-22, "no structural alterations shall be made in a building . . . substantially occupied by a non-conforming use, except when made . . . in order to accommodate a conforming use" unless certain other Article V provisions apply; and

WHEREAS, here, the significant demolition of most, if not all, of the Prior Building, the creation of a new cellar and the addition of floors all constitute structural alteration, and none of the Article V provisions regarding permitted enlargements apply to commercial uses in residential districts; and

WHEREAS, in other words, the ZR does not authorize the Yeshiva to both change the prior UG 16 non-conforming use to UG 9 non-conforming use and also structurally alter the Prior Building; instead, it prevents this from happening; and

WHEREAS, thus, the 1998 amendment to the 1992 permit to reflect UG 9 catering use was unlawful; and

WHEREAS, even if one accepted the proposition that

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tolling could retroactively occur upon such amendment (which the Board does not), clearly such an amendment would have to be lawful; and

WHEREAS, nevertheless, the Yeshiva suggests that the alterations made to the building were in fact authorized by the ZR; and

WHEREAS, specifically, the Yeshiva cites to ZR § 11-412, which allows the Board to authorize alterations and enlargements to uses subject to Board variances granted under the 1916 zoning code; and

WHEREAS, the Yeshiva cites to the 1958 variance mentioned above; and

WHEREAS, however, as previously explained, this variance was time limited, and the subsequent action on the variance in 1961 was a nullity; and

WHEREAS, thus, any citation to ZR § 11-412 is entirely irrelevant, since there is no Board grant that affects the site; and

WHEREAS, further, even if the 1961 variance still was in effect, this Board would have to affirmatively approve upon formal application and hearing any alteration or enlargement to a pre-1961 variance-affected building pursuant to ZR § 11-412; and

WHEREAS, moreover, the Board would have to approve the change in use from UG 16 to UG 9 pursuant to ZR § 11-413; however, no alteration application under ZR § 11-412 is allowed in furtherance of a use authorized under ZR § 11-413; and

WHEREAS, in any event, the Yeshiva never sought from this Board any approval to enlarge or otherwise structurally alter the Prior Building; and

WHEREAS, instead, the Yeshiva only sought allegedly as of right building permits from DOB; and

WHEREAS, further, the addition of two new stories clearly violated the cap on additional floor area of 50 percent of existing floor area, as set forth in ZR § 11-412; and

WHEREAS, accordingly, the Board finds that the argument that ZR § 11-412 somehow validates the otherwise impermissible structural alteration and enlargement undertaken to accommodate, in part, the UG 9 catering use is without any merit whatsoever; and

WHEREAS, in sum, the Yeshiva's argument that the 1992 permit and the 1998 amendment somehow magically act together to preserve the right to a non-conforming use in the absence of any actual use for a period of more than two years is entirely without merit, because it is contrary to both DOB policy and the ZR and is not otherwise supported by case law; and

WHEREAS, further, even assuming *arguendo* that the Yeshiva's argument is correct, the UG 9 catering listing on the Current CO is still invalid because the Yeshiva impermissibly structurally altered the Prior Building to accommodate the UG 9 use; and

WHEREAS, as to the sufficiency of evidence, the Yeshiva argues that the 1995 inspection report should not be relied upon since the violation was dismissed, and that the

phone records should not be used when public utility records are more appropriate evidence; and

WHEREAS, the Board disagrees with the Yeshiva on both points; and

WHEREAS, first, the observations of the inspector may be relied upon even if the violation was dismissed, a position supported by a case cited by the Yeshiva in its March 13, 2006 submission (Culp v. City of New York, 146 A.D. 326 (2<sup>nd</sup> Dep't, 1911)); and

WHEREAS, second, the lack of phone records is considered by this Board to be credible evidence of a lack of a commercial establishment, and has been in the past as well; and

WHEREAS, in fact, the absence of such records supported, in part, the Board's conclusion in the Toys "R" Us case; and

WHEREAS, further, the Board notes that there was considerable testimony from the public at hearing establishing that the use of the Repair Shop was ceased while the Yeshiva sought to alter and enlarge the Prior Building, eventually replacing it with an entirely different three-story building; and

WHEREAS, the Board also notes that the earlier DOB inspections from 1991 establish the beginning of the period of the cessation of non-conforming use for purposes of ZR § 52-61; and

WHEREAS, finally, leaving aside the Yeshiva's failure to refute DOB's evidence of discontinuance, the Board again observes that there was not even a single attempt by the Yeshiva to introduce evidence that would establish actual continuance, which strikes the Board as being the most expedient way to refute DOB's argument; and

WHEREAS, however, the Board notes that its determination as to the actual discontinuance is based upon its review and acceptance of DOB's cited evidence; and

WHEREAS, accordingly, the Board reiterates that the evidence in the record supporting the claim of discontinuance for the period of December 1990 to at least December 1997 is credible and sufficient; and

WHEREAS, the Yeshiva's third argument is that the Board must deny this application based on laches; specifically, the Yeshiva alleges that DOB delayed pursuing revocation or modification to the Current CO and prevented the Yeshiva from obtaining records that would prove that their was no discontinuance of the Repair Shop use; and

WHEREAS, the Board notes that it is not a quasi-judicial tribunal as alleged, so it is not appropriate for it to entertain equitable defenses; and

WHEREAS, further, none of the alleged precedent cited by the Yeshiva in support of the notion that the Board can determine equitable defenses stands for this proposition; and

WHEREAS, accordingly, the Board declines to review this argument; and

WHEREAS, the Board reaches a similar conclusion about its ability to hear an argument based on principles of equitable estoppel, and thus declines to review this argument as well; and

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WHEREAS, based upon its consideration of the record and all the arguments made by DOB and the Yeshiva, the Board concludes that the reference on the Current CO to UG 9 catering facility use in the cellar was issued in error and is without legal effect; and

WHEREAS, the Board also concludes that the cellar of the New Building must hereafter be used only for conforming uses currently permitted in the underlying R5 zoning district, notwithstanding the existence of any prior certificate of occupancy issued to the subject premises; and

WHEREAS, in passing, the Board notes that pursuant to a stipulation entered into between the City and the Yeshiva and related to the above-mentioned legal challenge, this resolution will not be certified and filed immediately subsequent to decision; however, it is a final determination of the Board.

*Therefore it is Resolved* that the application brought by the Commissioner of the Department of Buildings, dated March 4, 2005, as amended, seeking modification of the cellar listing set forth on Certificate of Occupancy No. 300131122, is hereby granted, said listing shall be removed from the CO and the cellar of the building at the premises shall now only be used for conforming uses.

Adopted by the Board of Standards and Appeals, April 24, 2007.

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## **20-07-BZY thru 31-07-BZY**

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., d/b/a Villanova Heights, Inc., owner.

SUBJECT – Application January 18, 2007 – Proposed extension of time (§11-332) to complete construction of a minor development commenced under the zoning district regulations in effect as of October 2004. R1-2/NA-2. Zoning District.

PREMISES AFFECTED – 5030, 5040, and 5041 Goodridge Avenue and 5000, 5020, 5021, 5030, 5031, 5041, 5051, 5300, and 5310 Grosvenor Avenue, Bronx.

Block 5829, Lots 3630 and 3635; Block 5830, Lots 3912, 3920, 3930, and 3940; Block 5831, Lots 40, 50, 60, and 70; Block 5839, Lots 4018 and 4025, Borough of Bronx.

## **COMMUNITY BOARD #8BX**

APPEARANCES –

For Applicant: Josh Rinesmith.

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

**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 under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of certificates of occupancy for, 12 single-family dwellings currently under construction at the subject premises; and

WHEREAS, the Board notes that while separate applications were filed for each permit for each of the buildings, in the interest of convenience, it heard the cases

together and the record is the same for all of the applications; and

WHEREAS, the applicant has also brought separate applications, under BSA Cal. Nos. 17-07-BZY thru 19-07-BZY, for three additional homes to be constructed at the site; these three homes are not addressed here; and

WHEREAS, a public hearing was held on this application on April 10, 2007, after due notice by publication in *The City Record*, and then to decision on April 24, 2007; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises are part of an approximately 15-acre site known as Chapel Farm; Goodridge Avenue and Grosvenor Avenue are adjacent semi-circular streets; and

WHEREAS, the premises are currently located within an R1-2 zoning district within Special Natural Area District 2 (SNAD); and

WHEREAS, the development complies with a prior version of the SNAD regulations; and

WHEREAS, however, on February 2, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt a text amendment, which affected the SNAD regulations and resulted in non-compliances; and

WHEREAS, as of that date, the applicant had obtained permits for all 12 homes and had completed the foundation for one home, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on contiguous zoning lots, as a “major development”; and

WHEREAS, for “major development,” an extension of time to complete construction, previously authorized by a DOB vesting determination, based on the criteria set forth in ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and

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# MINUTES

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Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

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

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

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 200922519, 200922528, 200922537, 200922546, 200922555, 200922564, 200922573, 200922582, 200922591, 200922608, 200922617, and 200922626 (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and have been timely renewed; and

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

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

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

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

WHEREAS, in written statements and testimony,

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes site preparation, rock removal, excavation, roadwork, and the installation of a storm drainage field, sanitary sewer piping, and sewer catch basins; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing rock clearance, excavation, unimproved roads, the completed foundation on Lot 40, financial records, and copies of cancelled checks; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the construction of the completed foundation is \$350,000 (approximately 12 percent) out of a total \$32 million for the construction of all 12 homes; the applicant represents that \$2,875,000 (approximately 36 percent) has been spent on infrastructure for the entire 15-home development out of a total of approximately \$8 million; and

WHEREAS, the applicant has submitted financial records and copies of cancelled checks; and

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

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

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

WHEREAS, the applicant stated that because of the complexity of the work, including extensive infrastructure, six additional years will be needed to complete the development; and

WHEREAS, the Board notes that ZR § 11-332 limits the amount of time it may grant for extensions to complete construction for a major development to three terms of not more than two years; and

WHEREAS, the Board recognizes that the scope of work remaining would require additional time to complete, beyond the two years authorized by ZR § 11-332, and agreed to review subsequent requests for extensions of time and determine whether it is appropriate to approve them by letter; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to, ZR § 11-332.

*Therefore it is Resolved* that this application made

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pursuant to ZR § 11-332 to renew Building Permit Nos. 200922519, 200922528, 200922537, 200922546, 200922555, 200922564, 200922573, 200922582, 200922591, 200922608, 200922617, and 200922626, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain certificates of occupancy for one term of two years from the date of this resolution, to expire on April 24, 2009.

Adopted by the Board of Standards and Appeals, April 24, 2007.

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**217-06-A**

APPLICANT – Eric Palatnik, P.C., for Yee Kon, LLC, owner.

SUBJECT – Application August 28, 2006 – Proposed construction of a daycare center which extends into the bed of a mapped street (Francis Lewis Blvd) contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 40-54 Francis Lewis Boulevard, a/k/a 196-23 42<sup>nd</sup> Street, north side of the intersection of Francis Lewis Boulevard and 42<sup>nd</sup> Avenue, Block 5361, Lot 10, Borough of Queens.

**COMMUNITY BOARD #11Q**

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 8, 2007, at 10 A.M., for decision, hearing closed.

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**276-06-A**

APPLICANT – Rothkrug Rothkrug and Spector, for Fred Corona, owner.

SUBJECT – Application October 13, 2006 – Appeal challenging the Department of Buildings determination that the subject premises fails to comply with Section 23-711 (Minimum Distance between buildings) and Section 23-88 (Minimum Distance between Lot lines and Building Walls within in LDGMA areas). R3A zoning district.

PREMISES AFFECTED – 8 and 12 Reynolds Street, south side of Reynolds Street, 100’ west of Mary’s Avenue, Block 2989, Lots 30 and 28, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Janine Gaylard, 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 May 22, 2007, at 10 A.M., for decision, hearing closed.

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**307-06-A**

APPLICANT – Alec Shtromandel-FHSRI, for 58<sup>th</sup> Avenue Management, LLC, owner; Forest Hills Student Residences, lessee.

SUBJECT – Application November 22, 2006 – An appeal challenging Department of Buildings determination that the subject premises does not qualify as a Community Facility under Section 22-13 of the Zoning Resolution. R5 Zoning District.

PREMISES AFFECTED – 86-18 58<sup>th</sup> Avenue, east side of 58<sup>th</sup> Avenue, 160’ north of the corner formed by the intersection of Van Horn Street and 58<sup>th</sup> Avenue, Block 2872, Lot 15, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Alec Shtromandel.

For Administration: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 19, 2007, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: 11:20 A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, APRIL 24, 2007  
1:30 P.M.**

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

**ZONING CALENDAR**

**111-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application June 5, 2005 – Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Richard Lobel.

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

THE VOTE TO GRANT –

Affirmative:.....0

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

Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, reads, in pertinent part:

“Provide minimum side yards as per ZR 23-48

FAR exceeds that permitted by ZR 23-141.

Proposed wall height exceeds that permitted by ZR 23-631”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the legalization of a purported enlargement of a single-family dwelling, which does not comply with the zoning requirements for side yards, Floor Area Ratio, and perimeter wall height, contrary to ZR §§ 23-48, 23-141, and 23-631; 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 30, 2007 and March 13, 2007, and then to decision on April 24, 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, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the Manhattan Beach Community Group also appeared in opposition to this application, and numerous other individuals made submissions in opposition; and

WHEREAS, certain individuals submitted letters in support of this application to the Community Board; and

WHEREAS, the subject lot is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, in the Manhattan Beach neighborhood of Brooklyn; and

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

WHEREAS, the subject lot has a total lot area of 3,241 sq. ft.; and

WHEREAS, the applicant states that the lot is now occupied by an illegal two-story single-family dwelling; and

WHEREAS, the applicant represents that the existing building has an FAR of 0.70, side yards of 0’-11” and 4’-9”, and a perimeter wall height of 23.3 feet; and

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

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

WHEREAS, the chronology of recent development on the site, most of which was illegal, originated when the owner of the of the previously existing one-story single-family home at the site (the “Prior Building”) hired a contractor in January 2005 to assess the home for an enlargement; and

WHEREAS, as set forth in an affidavit from this contractor, submitted into the record by the applicant, the inspection allegedly revealed damaged wood caused by termites and age, as well as water damage to the foundations; and

WHEREAS, the project commenced thereafter in March 2005, with the owner’s architect filing plans at DOB for the alleged enlargement; and

WHEREAS, as indicated in the application materials, the contemplated work included partial demolition of the walls of the Prior Building, an addition, and the enlargement of the cellar; and

WHEREAS, the owner’s architect obtained a professionally certified permit for the proposed work (permit no. 301914178; hereinafter, the “Permit”), and construction commenced thereafter; and

WHEREAS, according to the applicant, in April 2005, an engineer, retained as a consultant and not as the structural engineer of record, performed a Windsor probe test on the concrete foundations and walls of the Prior Building; and

WHEREAS, the applicant submitted a report from this engineer with the date listed as April 12, 2005, which

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indicates probe results taken from the footings, the south wall and the north wall; and

WHEREAS, in the report, the engineer concludes “Based on Windsor probe test and visual observation (cracks and lack of rebars) the foundation is not structurally sound. This report is to be evaluated by structural engineer of record.”; and

WHEREAS, subsequently, the initially filed plans were revised and work proceeded according to these revised plans; and

WHEREAS, however, these revisions had nothing to do with the alleged problems with the structural stability of the Prior Building’s foundation and walls; further, even though the owner’s representatives had knowledge about the need for more extensive demolition, the revised plans did not accurately reflect this work; and

WHEREAS, instead, demolition of more of the Prior Building than allowed by the Permit and the revised plans occurred without DOB sanction; and

WHEREAS, on May 2, 2005, DOB issued a stop work order (“SWO-1”) and a violation for this illegal work; and

WHEREAS, the inspector’s comments on the violation read “WORK WITHOUT A PERMIT-HAZARDOUS WORK NOTED:ON A JOB THAT CALLS FOR PARTIAL DEMOLITION,THERE IS ONLY A 25FT SECTION OF CONCRETE WALL AT NORTH SIDE OF PROPERTY THAT REMAINS.ENTIRE ROOF AND CEILING JOISTS RAFTERS”; and

WHEREAS, as conceded by the applicant during hearing, though the south wall of the Prior Building was anticipated to remain, it was in fact demolished, even though the revised plans did not reflect this; and

WHEREAS, following the issuance of this violation, the owner’s representatives apparently contacted DOB and sought to have SWO-1 removed; and

WHEREAS, the applicant claims that these representatives submitted documentation to DOB establishing the allegedly deteriorated condition of the south wall that necessitated its demolition, even though both the initial plans and revised plans contemplated its retention; and

WHEREAS, there is no DOB record of what was submitted; and

WHEREAS, the applicant attached certain documents to its October 18, 2006 statement, seemingly to suggest that these were the documents submitted to DOB in May 2005; and

WHEREAS, however, only one of those documents, the aforementioned report from the consulting engineer, conclusively pre-dates DOB’s lift of SWO-1; and

WHEREAS, the attached letter from the project engineer is from one year later, and the other attached document was the affidavit from the project contractor; and

WHEREAS, though the Board cannot ascertain what DOB reviewed, DOB nevertheless lifted SWO-1 on June 10, 2005, and work recommenced; and

WHEREAS, unfortunately, even after this initial

enforcement action of DOB, the record reveals that work proceeded contrary to plans and the ZR, and the above-mentioned non-compliances were deliberately created; no further plan amendments to legalize this work were ever received by DOB; and

WHEREAS, DOB later responded to a complaint about this illegal work, and issued a notice of intent to revoke the Permit on March 13, 2006 (the “Notice”); and

WHEREAS, DOB also issued a second stop work order (“SWO-2”) on or around April 1, 2006, citing this illegal construction; and

WHEREAS, no work was done thereafter; and

WHEREAS, the owner’s representatives then managed to obtain a DOB determination dated August 22, 2006, allowing the Permit to still be categorized as an alteration, ostensibly for purposes of the application here, in spite of the illegal demolition and construction; and

WHEREAS, DOB accepted this request with the condition that the first floor joists and ceiling joists that were apparently indicated in existing condition plans shown to DOB at this time would be retained; if these elements were not retained, DOB indicated that a new building permit application would be required; and

WHEREAS, the applicant did not offer any conclusive proof into the record that these elements were retained; and

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

WHEREAS, specifically, the applicant failed to prove that the existing building reflects an actual enlargement of the Prior Building, as opposed to the construction of a new building; and

WHEREAS, as a threshold issue, as this Board has previously determined, DOB’s categorization of a construction plan as an alteration, for which an alteration permit is appropriate, or as a new building, for which a new building permit is appropriate, is a separate inquiry from that conducted by the Board for purposes of the instant special permit; and

WHEREAS, the Board previously took this position in another application for a home enlargement special permit (BSA Cal. No. 128-05-BZ), notwithstanding DOB’s determination that the proposed work was an alteration for permitting purposes; and

WHEREAS, instead, the Board looks to the text of ZR § 73-622, the definition of “enlargement” set forth at ZR § 12-10, other ZR definitions, and the facts at hand; and

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

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

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been

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a demolition of the pre-existing building to the point where there is only one wall remaining as occurred here; and

WHEREAS, the Board notes that the remaining wall section was not even used or integrated into the new home, but was merely reinforced by a new structural wall; and

WHEREAS, under such circumstances, the Board can only conclude that a brand new home was built around the Prior Building's sole remaining structural element; and

WHEREAS, thus, the Board finds the construction performed at the premises does not meet the ZR definition of enlargement, nor is it an enlargement of the Prior Home in practice; and

WHEREAS, in response, the applicant suggests that ZR § 73-622 is ambiguous as to what is an enlargement of an existing home, and argues that since zoning is in derogation of the common law, any ambiguity should be resolved in favor the landowner; and

WHEREAS, however, there is no ambiguity here: the Prior Building was demolished except for one small portion of wall, and a new home was built around this portion; and

WHEREAS, as noted above, the applicable definitions are clear and unambiguous – such construction is not an enlargement; and

WHEREAS, the applicant also cites to a prior Board determination on another ZR § 73-622 application, BSA Cal. No. 133-05-BZ (hereinafter, the "Prior Decision") in support of the argument that a full demolition of a damaged building can occur yet the subsequent construction of a new building may still be eligible for the home enlargement special permit; and

WHEREAS, this application concerned the legalization of construction at 1231 East 21<sup>st</sup> Street, Brooklyn; and

WHEREAS, the applicant notes correctly that the home in question was also discovered to have termite damage, which necessitated that new walls be installed; and

WHEREAS, however, the alleged factual similarities between the two cases end there; and

WHEREAS, first, in the Prior Decision, the home was enlarged within an as of right envelope; and

WHEREAS, in other words, the home as enlarged possessed complying yards and perimeter wall height, unlike the existing building here; and

WHEREAS, the need for the special permit application only arose because the contractor filled in a double-height space with a new floor, thereby creating non-complying floor area; and

WHEREAS, second, there was no repeated failure to amend plans reflecting the actual course of contemplated construction with full knowledge of the damage to the building that obviously would necessitate amended plans, as occurred here; and

WHEREAS, most importantly, a fundamental difference between the two cases is reflected in a recital in the resolution for 133-05-BZ; and

WHEREAS, this recital reads: "further, the applicant rebuilt on the existing foundations as contemplated under the as

of right permit, which the Board views as evidence of an intent to comply with the permit, absent the termite damage"; and

WHEREAS, as noted above, even after DOB noticed the illegal demolition and issued SWO-1, construction proceeded in blatant disregard to the Permit and the plans underlying the Permit; and

WHEREAS, there was no attempt to rebuild on the existing foundation at all, which connotes a deliberate desire to not limit construction to the legal parameters under the zoning; and

WHEREAS, further, there was no intent to comply with the Permit, and had DOB not issued the Notice and SWO-2, the Board can legitimately question whether any proactive step to legalize the illegal construction would have been taken by the owner or the representatives; and

WHEREAS, further, that the construction in the Prior Decision reused the prior foundation walls is more akin to an enlargement than what occurred in the instant case, where there was construction of a completely new building around a portion of a wall not used at all for structural support; and

WHEREAS, the applicant attempts to show there was no intent to demolish the Prior Building illegally by submitting the construction contract, which does not explicitly mention demolition; and

WHEREAS, however, the Board notes that the application for the Permit clearly contemplates partial demolition; thus, the absence of such language in the construction contract proves nothing; and

WHEREAS, for the above reasons, the Board finds that the Prior Decision does not compel the approval of the instant application; and

WHEREAS, in sum, the Board observes the following:

(1) the project contractor swears that he was aware of the alleged problems with the walls of the Prior Building even before the original plans were professionally certified; (2) in spite of this knowledge, the plans associated with the Permit nevertheless reflect the retention of the walls that were of concern; (3) a consulting engineer assessed the Prior Building and concluded that the walls allegedly had problems; (4) in spite of this knowledge, the owner's representatives modified the Permit plans without reflecting the allegedly necessary full demolition of the north wall; (5) only after DOB issued SWO-1 did the owner's representatives explain to DOB why they allegedly demolished the north wall; (6) even though the owner's representatives were before DOB to address SWO-1, they did not modify the plans to reflect the impending illegal construction; (7) having deliberately failed to seek Board approval at that time for the impending non-complying construction and even after DOB had been involved with the construction on the site as part of its enforcement mandate, the construction proceeded contrary both to the approved plans and the ZR for close to a year; and (8) in a ploy to retain the ability to seek the instant special permit, the owner's representatives obtained a determination from DOB as to the Permit being an alteration; and

WHEREAS, based upon the above and its review of the record, the Board finds that: (1) the construction that

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occurred at the site was not the enlargement of an existing building, as required by ZR § 73-622; and (2) the Prior Decision is not binding precedent; and

WHEREAS, accordingly, the Board is without authority to grant the instant application.

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, is hereby upheld and that this application for a special permit pursuant to ZR § 73-622 is hereby denied.

Adopted by the Board of Standards and Appeals, April 24, 2007.

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### 136-06-BZ

APPLICANT – Kenneth Fisher, Wolf Block, LLP, for Ironworks, LLC, owner.

SUBJECT – Application June 29, 2006 – Zoning variance under §72-21 to allow the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. The proposed development violates use (§42-00), FAR (§43-12), and rear yard (§43-26 and §43-27) regulations. The project would include ground floor retail space and twelve (12) dwelling units on the upper floors. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Front and Water Street, Block 35, Lots 7, 8, 9, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Paul Proux.

**ACTION OF THE BOARD** – Laid over to May 8, 2007, at 1:30 P.M., for deferred decision.

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### 87-05-BZ

APPLICANT – Eric Palatnik, P.C., for Tri-Boro Properties, LLC, owner.

SUBJECT – Application April 8, 2005 – Zoning Variance under (§72-21) to allow a four (4) story residential building containing seventeen (17) dwelling units in an M1-1D district. Proposal is contrary to use regulations (§42-10).

PREMISES AFFECTED – 216 26<sup>th</sup> Street, between Fourth and Fifth Avenues, Block 658, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Eric Palatnik and Hege Eilertsen.

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.

### 425-05-BZ

APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.

SUBJECT – Application December 28, 2005 – Variance (§72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§23-141c and §24-162), front yard (§24-34), side yards (§24-35), lot coverage (§23-141 and §24-111) and minimum distance between legally required windows and lot lines (§23-86(a)). Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.

PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24<sup>th</sup> to the west, Block 7441, Lots 1 and 104, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Calvin Wong.

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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### 73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a PCE in a portion of the cellar and a portion of the first floor in a three-story building in a C2-3/R6 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

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### 86-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Emil Moshkovich, owner.

SUBJECT – Application May 5, 2006 – Variance (§72-21) to allow Use Group 7 (tire sales with installation services) and Use Group 16 (automotive repair) in an R3-2/C1-2 district; contrary to use regulations (§32-10). An as-of-right eating and drinking establishment (Use Group 6) is also proposed. Additionally, a Special Permit under §73-44 is requested to allow the reduction of required off-street parking requirements.

PREMISES AFFECTED – 145-70 Guy R. Brewer Boulevard, northwestern corner of the intersection between

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Guy Brewer and Farmers Boulevards, Block 13309, Lots 36, 42, 44, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for an adjourned hearing.

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**103-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Charles Mandlebaum, owner.

SUBJECT – Application May 23, 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)) and rear yard (23-47) in R-2 zoning district.

PREMISES AFFECTED – 1324 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues M and N, Block 7658, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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

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**262-06-BZ**

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application September 26, 2006 – Variance (§72-21) to allow the residential conversion of an existing four (4) story industrial building. The proposed project would include fifty-five (55) dwelling units and twenty-seven (27) accessory parking spaces and is contrary to requirements for minimum distance between legally required windows and walls or lot lines (§23-861). R6B district.

PREMISES AFFECTED – 71-13 60<sup>th</sup> Lane, between 71<sup>st</sup> Avenue and Myrtle Avenue, Block 3538, Lot 67, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES – None.

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

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**59-07-A**

APPLICANT – Law Offices of Howard Goldman, LLC for Ridgewood Equities, LLC, owner.

SUBJECT – Application March 8, 2007 – Proposed building frontage is contrary to BC 27-291 Article 2. Provide Fire Department Approval. R6B Zoning District.

PREMISES AFFECTED – 71-13 60<sup>th</sup> Lane, between 71<sup>st</sup> Avenue and Myrtle Avenue, Borough of 3538, Lot 67, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 5,

2007, at 1:30 P.M., for an adjourned hearing.

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**154-05-BZ**

APPLICANT – Kenneth K. Lowenstein, for Broome Thompson, LLC, owner.

SUBJECT – Application June 28, 2005 – Variance (§72-21) to permit the construction of a nine-story mixed-use building which will contain 51 residential units, 7,340 square feet of ground retail uses and a 280-space public parking garage. The premises is located in an M1-5B zoning district. The proposal is contrary to Sections 42-10 (Commercial (Use Group 6) and Residential (Use Group 2) uses are not permitted in a M1-5B zoning district, 42-13 (There are no residential bulk regulations in a M1-5B zoning district), and 13-12 (The proposed public parking garage is not permitted in a residential development.)

PREMISES AFFECTED – 520-528 Broome Street and 530-532 Broome Street/55 Sullivan Street, north side of Broome Street, between Thompson and Sullivan Streets, Block 489, Lots 1 and 41, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Ken Lowenstein, Jack Freeman, Steven Jacobs and Bob Esnard.

For Opposition: Doris Diether of CB#2, Andrew Berman GRSHP and Stuart A. Klein.

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

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**119-06-BZ**

APPLICANT – Harold Weinberg, P.E., for Jack Erdos, owner.

SUBJECT – Application June 9, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141) and side yard (23-461) in an R4(OP) zoning district.

PREMISES AFFECTED – 444 Avenue W, south side 70'-0" east of East 4<sup>th</sup> Street, between Avenue R and S, Block 7180, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg, P.E.

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

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**261-06-BZ**

APPLICANT – Sheldon Lobel, P.C, for Congregation Mazah, owner.

SUBJECT – Application September 25, 2006 – Variance (§72-21) to permit the construction and operation of a Yehsiva (Use Group 3A) and accessory synagogue (Use Group 4A) in a M1-2 zoning district. The proposal is contrary to section 42-10.

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# MINUTES

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PREMISES AFFECTED – 87-99 Union Avenue, west side of Union Avenue at the intersection of Harrison Avenue, Union Avenue and Lorimer Street, Block 2241, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Richard Lobel and Israel Nelman.

**ACTION OF THE BOARD** – Laid over to June 12, 2007, at 1:30 P.M., for continued hearing.

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**306-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for 60 Lawrence, LLC, owner.

SUBJECT – Application November 21, 2006 – Variance (72-21) to permit the construction of a one and six-story religious school building with the one-story portion along the rear lot line. The premises is located in a split M1-1/R5 zoning district and the Ocean Parkway Special Zoning District. The proposal is contrary to the use regulations (42-00), floor area and lot coverage (24-11), front yard (24-34), side yards (24-35), and front wall (24-52).

PREMISES AFFECTED – 50 Lawrence Avenue, south side of Lawrence Avenue, approximately 36' east of McDonald Avenue, Block 5422, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel and Councilmember Simcha Felder.

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

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**309-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Melody Silvers and Morris Silvers and Morris Silvers, owners.

SUBJECT – Application November 30, 2006 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23141(a)) and side yard requirement (23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2817 Avenue M, between East 28<sup>th</sup> and East 29<sup>th</sup> Street, Block 7646, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD # 14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**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: 4:45 P.M.*