
BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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235-07-BZ

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236-07-BZ

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237-07-BZ

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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.

CALENDAR

NOVEMBER 27, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 27, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

742-70-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 830 Bay Street LLC, owner.

SUBJECT – Application July 13, 2007 – Application filed pursuant to §§72-01 and 72-22 for an Extension of Term/Amendment/Waiver for a previously approved variance which allowed in a C1-1(R3-2) zoning district the erection and maintenance of an automotive service station with accessory uses. The application seeks to legalize the installation of two storage containers contrary to the previously approved grant. The current term of the variance expired on May 18, 2001.

PREMISES AFFECTED – 830 Bay Street, Southwest corner of the intersection of Bay Street and Vanderbilt Avenue, Block 2836, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #1SI

297-99-BZII

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Co., LLC, owner; Exxon Mobil Corp., lessee.

SUBJECT – Application May 29, 2007 – Extension of Time to obtain a Certificate of Occupancy/Waiver of the rules for an existing gasoline service station (Mobil Station) which expired on September 19, 2004 in a C2-2/R6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

123-07-A

APPLICANT – Eric Palatnik, P.C., for James Colarusso, owner.

SUBJECT – Application May 15, 2007 – Proposed construction of a single family home not fronting on a legally mapped street contrary to General City Law Section 36 . R6 Zoning District.

PREMISES AFFECTED – 723R Driggs Avenue, south corner of Driggs Avenue and South First Street, Block 2407, Lot 141, Borough of Brooklyn.

COMMUNITY BOARD #1BK

NOVEMBER 27, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 27, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

74-07-BZ

APPLICANT – Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for Congregation Shearith Israel a/k/a Trustees of the Congregation Shearith Israel in the City of N.Y. a/k/a the Spanish and Portuguese Synagogue.

SUBJECT – Application April 2, 2007 – Variance (§ 72-21) to allow a nine (9) story residential/community facility building; the proposal is contrary to regulations for lot coverage (§ 24-11), rear yard (§ 24-36), base height, building height and setback (§ 23-633) and rear setback (§ 23-663). R8B and R10A districts.

PREMISES AFFECTED – 6-10 West 70th Street, south side of West 70th Street, west of the corner formed by the intersection of Central Park West and West 70th Street, Block 1122, Lots 36 & 37, Borough of Manhattan.

COMMUNITY BOARD #7M

Jeff Mulligan, Executive Director

CALENDAR

DECEMBER 4, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 4, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

170-47-BZ

APPLICANT – Kenneth H. Koons, for Royal Automation Supplies Corporation, owner.

SUBJECT – Application October 9, 2007 – Extension of Term of a (UG 16) storage warehouse in the cellar, used in conjunction with a (UG 17) factory on the first floor, in an R7-1 zoning district which expired on November 25, 2007. PREMISES AFFECTED – 1982 Crotona Parkway, east side of Crotona Parkway, south of East 178th Street, Block 3121, Lot 11, Borough of Bronx.

COMMUNITY BOARD #6BX

651-60-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Briar Hill Realty LLC c/o Glennwood Management Corporation, owner.

SUBJECT – Application September 14, 2007 – Extension of Term of a variance allowing the conversion of cellar space in an existing multiple dwelling to a valet service, office/stationary store and packaged goods store and to waive the Board's Rules of Procedure to allow the application to be filed more than thirty days after the expiration of the variance. The subject site is located in an R4 zoning district,

PREMISES AFFECTED – 600 West 246th Street, Located on an irregularly shaped lot bounded by the south side of West 246th Street, the east side of Independence Avenue and the north side of Blackstone Avenue, Block 5909, Lot 825, Borough of Bronx.

COMMUNITY BOARD #8BX

83-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Gary S. Chubak and Lillian R. Chubak, owners.

SUBJECT – Application October 3, 2007 – Amendment -To remove the terms set forth in the prior resolution. The proposed amendment would authorize the control operation of the health care facility (UG4) at the premises located in an R1-2 zoning district with out a term.

PREMISES AFFECTED – 214-18 24th Street, south side of 24th Avenue, approximately 142 feet east of the corner formed by the intersection of Bell Boulevard and 24th Avenue, Block 6001, Lot 47, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

196-07-A thru 199-07-A

APPLICANT – Willy C. Yuin, R.A., for Carmine Lacertosa, owner.

SUBJECT – Application August 9, 2007 – Proposed construction of one & two family homes not fronting on a legally mapped street contrary to Article 3 Section 36 of the General City Law. R-5 Zoning district.

PREMISES AFFECTED – 9 Federal Place, west of Federal Place 195.91' south of the corner of Richmond Terrace and Federal Place, Block 1272, Lot 72, 76, 77, 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

DECEMBER 4, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 4, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-07-BZ thru 152-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Cannon Tower, LLC, owner.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to allow a three (3), three-story attached residential buildings; contrary to regulations for use (§ 22-12), side yards (§ 23-461(a)), maximum number of dwelling units (§ 23-22), perimeter wall height (§ 23-631), and FAR (§ 23-141). R4A district.

PREMISES AFFECTED – 3880, 3882, 3884 Cannon Place (formerly known at 3918 Orloff Avenue) south side of Cannon Place at the intersection of Cannon Place and Orloff Avenue, Block 3263, Lots 357, 358, 258, Borough of the Bronx.

COMMUNITY BOARD # 8BX

193-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Gonter and Mark Gonter, owners.

SUBJECT – Application August 7, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (23-141); side yard (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3591 Bedford Avenue, eastern side of Bedford Avenue between Avenue N and O, Block 7679, Lot 17, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #14BK

201-07-BZ

APPLICANT – Cozen O’Connor Attorneys, for Kapsin & Dallis Realty, Corp., owner.

SUBJECT – Application August 14, 2007 – Variance (§72-21) to permit a new one-story bank. The proposal is contrary to section 22-00. R3-2 district.

PREMISES AFFECTED – 2317 Ralph Avenue, southwest corner of Ralph Avenue and Avenue M, Block 8364, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD # 18BK

216-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Casa 74th Street, LLC, owner.

SUBJECT – Application September 20, 2007 – Special Permit (§73-36) to allow a physical culture establishment on all five levels of a mixed-use building under construction. The proposal is contrary to section 32-10. C1-9 district.

PREMISES AFFECTED – 255 East 74th Street, aka 1429 Second Avenue, corner of East 74th Street and Second Avenue, Block 1429, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

223-07-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Trigon 57 LLC, owner; Blissworld LLC, lessee.

SUBJECT – Application September 28, 2007 – Special Permit (73-36) to legalize a physical culture establishment on the third floor in an existing commercial building. The proposal is contrary to section 32-10. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57th Street, a/k/a 10-14 W. 57th Street, south side of West 57th Street, between Fifth and Sixth Avenues, Block 1272, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 23, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

844-86-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Fred Lynn Associates, owner; Pyramida Billiards, lessee.

SUBJECT – Application February 12, 2007 – Extension of Term of a previously granted Special Permit (§73-50) for the enlargement of a one (1) story building, in a C8-2 zoning district, that encroaches into the open area required along a district boundary which expired on April 28, 1997; an Amendment to legalize the change in use from an auto repair shop (UG16) and custom clothing manufacturer (UG11) to a billiard parlor (UG12) and eating and drinking establishment (UG6) and to permit the addition of a 979. sq. ft. mezzanine in the UG6 portion of the building; an Extension of Time to obtain a Certificate of Occupancy which expired on May 4, 1999 and a Waiver of Rules of Practice & Procedure.

PREMISES AFFECTED – 1828/1836 McDonald Avenue, west side of McDonald Avenue, between Avenue P and Quentin Road, Block 6632, Lots 17 & 20, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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 waiver of the Rules of Practice and Procedure; a reopening; amendments: (1) to legalize the change in use of a portion of the site from an auto repair shop (UG 16) and custom clothing manufacturer (UG 11) to a billiard parlor (UG 12), (2) to permit the change in use of a portion of the site to an eating and drinking establishment (UG 6), (3) to add mezzanine space, and (4) to change the hours of operation; an extension of time to obtain a certificate of occupancy; and an elimination of the term for a previously granted special permit, pursuant to ZR § 73-50, which expired on April 28, 1997; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with continued hearings on August 21, 2007 and September 25, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

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

WHEREAS, the subject premises is located on the west side of McDonald Avenue, between Avenue P and Quentin Road; and

WHEREAS, the site has a lot area of approximately 9,134 sq. ft., is occupied by a one-story and mezzanine building, and is located within a C8-2 zoning district; and

WHEREAS, the building is occupied by a billiard parlor and eating and drinking establishment; and

WHEREAS, on April 28, 1987, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-50, to permit the construction of a rear enlargement for an auto repair shop into the required buffer zone between the subject C8-2 zoning district and the R6 zoning district adjacent to the rear of the site; and

WHEREAS, the special permit was limited to a term of ten years; and

WHEREAS, on May 4, 1993, under the subject calendar number, the Board modified the grant to permit a change in use of a portion of the site to custom clothing manufacturing; and

WHEREAS, in 2002, the use of a portion of the site was changed to a billiard parlor; and

WHEREAS, the instant application seeks a legalization of the change in use to a billiard parlor and a proposed use of an eating and drinking establishment on the remainder of the site; and

WHEREAS, the Board notes that the billiard parlor and eating and drinking establishment uses are permitted within the C8-2 zoning district; and

WHEREAS, the applicant also seeks to add a mezzanine with a floor area of approximately 979 sq. ft. to the portion of the building used for the eating and drinking establishment; and

WHEREAS, the Board notes that no changes are proposed to the building envelope and that the addition of the floor area associated with the mezzanine does not create any non-compliance as to floor area; and

WHEREAS, at hearing, the Board asked the applicant what use would occupy the new mezzanine since it is located at the rear of the site, within the required buffer zone; and

WHEREAS, the applicant responded that the proposed mezzanine would be used for office space accessory to the restaurant and the kitchen would occupy the area at the rear of the building so that the general restaurant use is confined to the area from away the buffer zone; and

WHEREAS, additionally, the applicant represents that an acoustic wall will also be installed to help eliminate any potential sound emanation; and

WHEREAS, the Board directed the applicant to ensure that all of the rooftop mechanicals were compliant with the Noise Code and positioned so as to minimize the potential of sound reaching nearby properties; and

WHEREAS, in response, the applicant provided (1) a

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roof plan, reflecting the position of the existing and proposed mechanicals, (2) photographs of the roof, and (3) a statement from the project architect describing the compliance with the Noise Code; and

WHEREAS, the Board notes that the rooftop mechanicals will be situated to be between ten and 20 feet from the parapet at the rear of the building; and

WHEREAS, finally, the applicant proposes to extend the hours of operation until 2:00 a.m.; and

WHEREAS, at hearing, the Board directed the applicant to notify the property owners on Dahill Road (at the rear of the site) to determine whether there was any objection to the operation of the site or the extended hours of operation; and

WHEREAS, in response, the applicant submitted proof that notification had been performed; and

WHEREAS, the Board notes that no letters of objection were received in response to the notice; and

WHEREAS, the applicant also seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, lastly, the applicant requests that the term be eliminated; and

WHEREAS, based upon its review of the record, the Board finds that the requested change in hours of operation, change in use, extension of time to obtain a certificate of occupancy, and elimination of term are appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 28, 1987, so that as amended this portion of the resolution shall read: “to grant approval of a change in use from an auto repair shop (UG 16) and custom clothing manufacturer (UG 11) to a billiard parlor (UG 12) and eating and drinking establishment (UG 6), a change in the hours of operation, an extension of time to obtain a certificate of occupancy, and an elimination of the term of the special permit; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked ‘Received February 12, 2007’ – (3) sheets, “June 11, 2007”-(3) sheets and “August 31, 2007”-(1) sheet; and *on condition*:

THAT there shall be no (1) change in use of the site, (2) modification to the building, or (3) change in hours of operation without prior approval from the Board;

THAT the term of the grant shall be eliminated;

THAT the hours of operation of the billiard parlor shall be limited to 2:00 p.m. to 2:00 a.m., daily;

THAT the hours of operation of the eating and drinking establishment shall be limited to 6:00 p.m. to 2:00 a.m., daily;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant, October 23, 2008;

THAT all rooftop mechanicals shall comply with Noise Code requirements;

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. 302172477)

Adopted by the Board of Standards and Appeals, October 23, 2007.

214-96-BZ

APPLICANT – Rampulla Associates Architects, for Colonial Funeral Home, owner.

SUBJECT – Application July 2, 2007 – Extension of Term of a previously granted Variance (§72-21) which expires on April 7, 2008, to permit in an R3-1 zoning district, a UG7 (Colonial Funeral Home) and the existing accessory parking on the adjacent lot (Lot 30) which houses a conforming UG1 single family home.

PREMISES AFFECTED – 2819 Hylan Boulevard, North side Hylan Boulevard east corner of Hylan Boulevard and Tysens Lane. Block 4256, Lot 34, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phil Rampulla.

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 waiver of the Rules of Practice and Procedure, to eliminate the term for an accessory parking lot to a funeral home, which would expire on April 7, 2008 and to allow its hours of operation to coincide with the hours of operation of the funeral home; and

WHEREAS, a public hearing was held on this application on August 21, 2007 after due notice by publication in the *City Record*, with a continued hearing on October 2, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Hylan Boulevard and Tysens Lane; and

WHEREAS, the site is located within an R3-1 zoning district and is improved upon with a one-story commercial office building with accessory parking for seven vehicles and a

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single-family home; and

WHEREAS, on November 9, 1960, the Board granted an application under BSA Cal. No. 430-60-BZ to permit the construction of a one-story and cellar building for use as a funeral establishment with use of the unbuilt portion of the lot for accessory parking for a term of 20 years to expire November 9, 1980, subject to certain conditions; and

WHEREAS, the grant was subsequently amended to extend its term and permit certain site modifications; and

WHEREAS, on April 7, 1992, under BSA Cal. No. 128-90-BZ, the Board granted under ZR §§ 11-411 and 11-412 an extension of the term of ten years to April 7, 2002 and legalized an extension of the funeral home use into an existing off-street loading garage; and

WHEREAS, on September 20, 1994, under Cal. No. 99-93-BZ, the Board granted an enlargement of the cellar and first story, subject to certain conditions and extended the term to September 20, 2004; and

WHEREAS, on October 10, 1995, the Board denied a request for the expansion of the commercial use of the present lot (Lot 28) onto the adjoining lot (Lot 30) which would have required the demolition of the structure at 2809 Hylan Boulevard and converting the entire lot into accessory off-street parking, and

WHEREAS, on April 7, 1998, under the subject calendar, the Board granted a variance to permit the legalization of the funeral home's chapel in the cellar area, a smoker's lounge, and ancillary office and storage area on the mezzanine level and the enlargement of the existing accessory parking lot by incorporating an adjacent parking lot (block 4256, Lot 34) which houses a conforming single-family home, and to extend the term to April 7, 2008 subject to conditions which included a limitation that access to the rear parking lot by customers of the funeral establishment be limited to the hours between 5:00 p.m. and 9:30 p.m.; and

WHEREAS, on February 8, 2007, the Board approved by letter an enlargement to the second floor of the existing one family home located at 2809 Hylan Boulevard which did not create any new non-compliance; and

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

WHEREAS, the applicant has operated as a funeral establishment for more than 46 years and any change to the size or bulk of the funeral home would require approval of this Board; and

WHEREAS, the applicant has sought and received multiple extensions to its term; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution with the conditions listed below.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, dated April 7, 1998, so that the resolution shall no longer contain a term associated with the grant and the access to the rear parking lot by customers of the funeral establishment shall no longer be limited to the hours between 5:00 p.m. and 9:30 p.m.; on

condition that the use and operation of the site shall conform to the previously approved drawings; and on further condition:

THAT there shall be no change in the use or in the building's bulk without prior approval of the Board;

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. 510006468)

Adopted by the Board of Standards and Appeals, October 23, 2007.

197-05-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: B & E 813 Broadway, LLC and Broadway Realty Associates, LLC.

SUBJECT – Application August 17, 2006 – To consider dismissal for lack of prosecution – Proposed 11-story residential building with ground floor retail to violate regulations for FAR (§ 23-145), height and setback (§ 35-24), and maximum number of dwelling units (§ 23-22). C6-1 district.

PREMISES AFFECTED – 813-815 Broadway, East 12th Street and East 11th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD # 2M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Application withdrawn from Dismissal Calendar.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, October 23, 2007.

347-05-A

APPLICANT – NYC Board of Standards and Appeals

OWNER: Douglaston Realty Associates, owners.

SUBJECT –To consider dismissal for lack of prosecution.

PREMISES AFFECTED – Vacant Lot, 242-22 61st Avenue, south side of 61st Avenue, Block 8266, Lot 186, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals,
October 23, 2007.

109-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Vincent Mazzone

SUBJECT – Application June 2, 2006 – To consider dismissal for lack of prosecution – Proposed three-story enlargement to an existing one-story building; contrary to bulk regulations. R5 district.

PREMISES AFFECTED – 1201 Avenue Z, north east corner of East 12th Street, Block 7433, Lot 148, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

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

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 26, 2006, acting on Department of Buildings Application No. 302036160, reads in pertinent part:

“The proposed three and one-half story building does not comply with:

Floor area (23-141b), FAR (23-141b ZR), Open Space (23-141b ZR), Lot Coverage (23-141b ZR), Yards (23-462 & 23-541), Setback (23-661 ZR); Wall Height (23-631 ZR), Building Height (23-631 ZR), Sky Exposure Plane (23-631d ZR) and parking (25-23 ZR) requirements and is therefore referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, a three-story vertical enlargement to an existing one-story building, contrary to regulations for floor area, FAR, open space, lot coverage, rear and side yards, setback, wall height, building height, sky exposure plane, and parking under ZR §§ 23-141, 23-462 & 23-541, 23-661, 23-631, and 25-23; and

WHEREAS, the applicant sought to construct residential uses above an existing one-story non-conforming commercial building occupied by a UG 6 restaurant on the first floor and UG 17 manufacturing on the cellar floor, with accessory parking for residents of the premises; and

WHEREAS, the variance application was filed on June 2, 2006; and

WHEREAS, on September 6, 2006, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, the Notice of Objections requested that the applicant submit the following: (1) a revised objection from

DOB stating that the proposed development was contrary to ZR § 23-45, and eliminating an objection under ZR § 23-541; (2) revisions to the affidavit of ownership concerning the owner of record; (3) evidence of the legal non-conforming status of the existing business on the subject property; (4) a revised Statement of Facts and Findings; (5) a revised BSA zoning analysis; (6) a revised proposed plot plan and floor plan for fourth floor; and (7) requisite color photographs; and

WHEREAS, on November 2, 2006, the applicant requested an additional 60 days to reply to the Notice of Objections; an extension of time to respond was granted; and

WHEREAS, the Board received no subsequent response from the applicant; and

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

WHEREAS, on September 26, 2007, the Board sent the applicant a notice stating that the case had been put on the October 23, 2007 dismissal calendar; and

WHEREAS, the applicant did not respond to the notice and did not appear at the hearing on October 23, 2007; and

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

Therefore it is Resolved that the application filed under BSA Cal. No. 109-06-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals,
October 23, 2007.

304-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Khan Shahnawaz.

SUBJECT – Application November 21, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the construction of a detached single family home on a vacant corner lot which does not provide the required front yard (23-45(a)) located in an R3-2 zoning district.

PREMISES AFFECTED – 106-02 Astoria Boulevard, southeast corner of Astoria Boulevard and 106th Street, Block 1639, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals,
October 23, 2007.

324-06-A

APPLICANT – NYC Board of Standards and Appeals

OWNER: Al Muhammad & Deborah Muhammad, owners.

SUBJECT – To consider dismissal for lack of prosecution.

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PREMISES AFFECTED – 1449 Rosedale Avenue, a/k/a 1447 Cross Bronx and Rosedale Avenue, Block 3895, Lot 77, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to an Order of Closure from the Commissioner of DOB, dated January 16, 2004; and

WHEREAS, the Order of Closure states that the existence of a gift store at the subject premises was determined to be an illegal commercial use (Use Group 6) in a residential zoning district (R6); and

WHEREAS, the appeal is brought by the tenants of the premises, (the “Appellants”); and

WHEREAS, the Appellants were the proprietors of a gift store at the site which was padlocked by DOB pursuant to the Order of Closure; and

WHEREAS, the Appellants initially filed a petition in New York State Supreme Court to contest the closure; and

WHEREAS, by decision dated July 20, 2006, the court stated that since the Appellants had not exhausted administrative remedies, specifically an appeal of DOB’s determination at the BSA, the case was not ripe for review; and

WHEREAS, accordingly, the Appellants filed the subject appeal on December 15, 2006, without payment of the appropriate fee; and

WHEREAS, in February 2007, Board staff met with the Appellants and addressed the question of whether they had standing to bring the appeal without authorization from the owner; and

WHEREAS, in April 2007, the Board determined that the Appellants did have standing to proceed with the appeal; and

WHEREAS, in April 2007, Board staff made several attempts to contact the Appellants at the telephone numbers noted in the application; and

WHEREAS, Board staff was unable to reach the Appellants; and

WHEREAS, ultimately, the Appellants contacted Board staff and Board staff informed them that they had legal standing to prosecute the appeal without the owner’s authorization but that they were required to pay the fee; and

WHEREAS, the Appellants contested the requirement to pay the fee; and

WHEREAS, on May 9, 2007, the Board sent a letter to the Appellants, at all known addresses, informing them that, as per the Board’s rules and the Administrative Code, a fee was required in order to proceed with the appeal; and

WHEREAS, the Board did not receive any payment or any other response from the Appellants; and

WHEREAS, the unopened letters regarding the payment

were received back at the Board as returned to sender; and

WHEREAS, on September 5, 2007, Board staff sent a letter to the Appellants at all known addresses stating that a public hearing to consider dismissal of the application would be scheduled for October 23, 2007; and

WHEREAS, the Board did not receive any response; and
WHEREAS, the Appellants did not appear at the October 23, 2007 hearing; and

WHEREAS, accordingly, because of the Appellants’ failure to prosecute this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 324-06-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 23, 2007.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application September 7, 2007 – ZR 11-411 for the Extension of Term of a previously granted variance for a UG8 parking garage (Rapid Park Industries) in an R8B zoning district which will expire on March 3, 2008.

PREMISES AFFECTED – 148-150 East 33rd Street, southside of East 33rd Street, east of East 33rd Street and Lexington Avenue, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to January 15, 2008, at 10 A.M., for continued hearing.

1199-88-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP., for Joseph and Rosemarie Tranchina, owner.

SUBJECT – Application May 11, 2007 – Amendment filed pursuant to §§72-01 & 72-22 of the zoning resolution to permit within a C1-1(R3-1)(SRD) the enlargement of previously approved banquet hall (use group 9) and a change in use from offices (use group 6) to retail stores (use group 6).

PREMISES AFFECTED – 29 Nelson Avenue, east side of Nelson Avenue, northeast corner of Nelson Avenue and Locust Place, Block 5143, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Joseph Tranchina.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

233-06-BZ

APPLICANT – New York City Board of Standards and

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Appeals.

OWNER: Syful Islam.

SUBJECT – Application September 11, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the legalization of an enlargement to a single family home, which required front yard 23-47 and less than the required side yard 23-461 in an R-5 zoning district; and also to change the occupancy from a one family to a two family home.

PREMISES AFFECTED – 2342 Haviland Avenue, Haviland Avenue bounded by Zerega Avenue and Havemeyer Avenue, Block 3827, Lot 51, Borough of Bronx.

COMMUNITY BOARD # 9BX

APPEARANCES –

For Applicant: Kathleen Bradshaw.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

293-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Veronica Nicastro.

SUBJECT – Application November 6, 2006 – To consider dismissal for lack of prosecution – Proposed variance (§72-21) for the enlargement of an existing one-family dwelling which exceeds the permitted floor area and does not provide the required open space (23-141) in an R1-2 zoning district.

PREMISES AFFECTED – 54-07 254th Street, east side of 254th Street, 189’ north of Horace Harding Expressway, Block 8256, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam Rothkrug

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

299-06-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Three Partners, LLC.

SUBJECT – Application November 3, 2006 – To consider dismissal for lack of prosecution – Proposed legalization of a public parking facility (garage and lot); contrary to use regulations (§ 22-10). R7-1 district.

PREMISES AFFECTED – 1976 Crotona Parkway, east side of Crotona Parkway, 100’ north of Tremont Avenue, Block 3121, Lots 10 and 25, Borough of Bronx

COMMUNITY BOARD # 6BX

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to November 20, 2007, at 10 A.M., for continued hearing on the dismissal calendar.

APPEALS CALENDAR

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

APPEARANCES –

For Applicant: David L. Businelli.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Abstain: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a one-story with cellar building with medical office use (UG 4) under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 22, 2007, after due notice by publication in *The City Record*, with continued hearings on August 7, 2007 and September 18, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the Dongan Hills United Civic Association submitted testimony in opposition to the application citing concerns about the long history of development and abandonment at the site and the potential incompatibility of the building with neighborhood character; and

WHEREAS, the site is located on the north side of Richmond Road, between Garretson Avenue and Forest Avenue and has a lot area of 5,353 sq. ft.; and

WHEREAS, the applicant notes that, on September 27, 1995, the Staten Island Borough President’s Office changed the address of the site from 1525 Richmond Road to 1523 Richmond Road; and

WHEREAS, the applicant proposes to complete construction and obtain a certificate of occupancy for a one-story with cellar medical office building (the “Building”), with 1,500 sq. ft. of floor area on the first floor and 1,500 sq. ft. of floor space in the cellar; and

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WHEREAS, the site is located within an R1-2 zoning district within the Special Natural Area District 1; and

WHEREAS, the Building complies with the former R1-2 zoning district parameters for UG 4 community facilities, specifically with respect to the proposed medical office use and the amount of floor area dedicated to it; and

WHEREAS, however, on September 9, 2004 (the "Enactment Date"), the City Council voted to adopt the amendments to the Community Facility regulations in the ZR, which included ZR § 22-14 – Use Group 4 provisions; and

WHEREAS, prior to the Enactment Date, medical offices were permitted in the subject zoning district pursuant to ZR § 22-14, but were limited to a maximum of 1,500 sq. ft. of total floor area or cellar space; and

WHEREAS, the text amendments prohibited medical office use regardless of size in the subject zoning district; and

WHEREAS, accordingly, a medical office use of any size is not permitted as of right under the current zoning; and
History of Development at the Site

WHEREAS, the plans for the Building date back to November 25, 1986 when a prior owner filed a new building application at DOB; and

WHEREAS, on November 25, 1987, the Department of City Planning approved an application to construct a one-story community facility building in the Special Natural Area District 1; and

WHEREAS, on July 6, 1990, DOB issued the New Building permit under DOB Application No. 3068/86 (the "1990 Permit"); and

WHEREAS, the applicant represents that the prior owner commenced construction and, in 1991, the building was approximately 85 percent complete; and

WHEREAS, the applicant represents that no work was performed at the site from 1991 until the applicant purchased it in 2005; and

WHEREAS, on March 12, 2006, DOB issued a permit (the "2006 Permit") for the construction of the Building; subsequent to a special audit, the permit was ultimately revoked prior to the completion of all work; and

WHEREAS, the applicant represents that the Building is now nearly complete and seeks to resume construction; and
Validity of the 2006 Permit

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

WHEREAS, initially, the applicant sought to vest the right to complete construction under the 2006 Permit (New Building Permit No. 500821596) since work had not been completed within two years of the Enactment Date; and

WHEREAS, thus, DOB and the Board first analyzed whether the 2006 Permit was valid; and

WHEREAS, DOB objected to vesting pursuant to the 2006 Permit because it stated that the 2006 Permit was issued in error; and

WHEREAS, specifically, DOB states that on May 16, 2006, it issued a letter of intent to revoke the permit for failure to demonstrate that the building was lawfully constructed pursuant to a valid permit; and

WHEREAS, on July 16, 2006, after the applicant failed to demonstrate that the building was lawfully constructed pursuant to a valid permit and after the applicant failed to produce a copy of the 1990 Permit, DOB revoked the 2006 Permit; and

WHEREAS, in its objections associated with the revocation, DOB stated its concerns that (1) all construction was not performed pursuant to a valid permit as required by ZR § 11-31; (2) the plans which were filed and approved under the application were contrary to the original approval; and (3) the proposed building exceeded the maximum allowable floor area for a medical office, which includes cellar space, pursuant to ZR § 22-14; and

WHEREAS, specifically, DOB states that its review revealed that the 2006 Permit improperly authorized a medical office building with 1,500 sq. ft. of floor area and an additional 1,500 sq. ft. of accessory space in the cellar, and the Building thereby exceeded the 1,500 sq. ft. total floor area limitation imposed by the pre-Enactment Date text of ZR § 22-14; and

WHEREAS, the Board notes that, prior to the Enactment Date, medical offices were a permitted UG 4 use, but were limited in R1 districts to not more than 1,500 sq. ft. of floor area including cellar space; and

WHEREAS, on August 7, 2006, DOB denied the applicant's request to change the cellar use to a non-profit institution use as a means of reducing the medical office's floor area under the 2006 Permit to meet the 1,500 sq. ft. limitation permitted by the ZR prior to the Enactment Date; and

WHEREAS, DOB asserts that the change in the use of the cellar level could not cure the defect with the 2006 Permit since no medical office use, regardless of its size, was permitted in the zoning district at the time of the 2006 Permit application; and

WHEREAS, on August 14, 2006, after the permit was revoked, DOB issued a new objection citing the failure to comply with ZR § 22-14 at the time of the issuance of the 2006 Permit; and

WHEREAS, DOB states, that after the ZR text was amended to prohibit the medical office use and the permit was revoked, DOB had no authority to reinstate the permit notwithstanding the applicant's efforts to cure the defects; and

WHEREAS, specifically, DOB states that pursuant to Administrative Code § 27-196, a permit may be reinstated only when the work complies with the law in effect at the time of the application for reinstatement; and

WHEREAS, accordingly, since the relevant ZR provisions were amended in September 2004 to prohibit any medical office use, and the permit was revoked in July 2006, the applicant's subsequent attempts to cure the objections were made too late to reinstate the permit; and

WHEREAS, DOB asserts that after the Enactment Date and the permit revocation, the permit for medical office use could not be reinstated and the premises must now comply with the amended law; and
Validity of the 1990 Permit

WHEREAS, however, after the July 2006 revocation of the permit, the applicant provided DOB with information about the 1990 Permit; and

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WHEREAS, as noted, on July 6, 1990, DOB issued the 1990 Permit and the prior owner commenced construction; and

WHEREAS, the 1990 Permit was issued for the construction of a one-story medical office building with 1,500 sq. ft. of floor area for medical office use on the first floor and 1,500 sq. ft. of accessory space in the cellar; and

WHEREAS, as noted, prior to the Enactment Date, the medical office use was permitted, but it was limited to 1,500 sq. ft. including all floor area and cellar space; and

WHEREAS, during the hearing process, the applicant submitted a copy of an amendment, approved by DOB on November 14, 1990, which reflects a change to the plans associated with the 1990 Permit from accessory medical office use in the cellar (UG 4) to a non-commercial art gallery (UG 3), although a copy of the approved plans reflecting the change of use has not been located; and

WHEREAS, during the hearing process, DOB reviewed the 1990 Permit and the 1990 amendment, which reduced the floor area occupied by medical office use to just the 1,500 sq. ft. on the first floor, and determined that it was an approved amendment which cured the defect of the 1990 Permit; and

WHEREAS, accordingly, DOB determined that the 1990 Permit, as amended, is a valid permit upon which to base the vested rights claim; and

WHEREAS, at hearing, the Board asked whether the 1990 Permit was in effect in 2005, the year the applicant stated that he purchased the Building; and

WHEREAS, DOB responded that, according to its records, no permit was in effect in 2005 that authorized construction of a medical office at the premises and no certificate of occupancy was in effect in 2005 that authorized use and occupancy of the premises as a medical office; and

WHEREAS, further, DOB noted that the 1990 Permit expired on April 15, 1991; and

WHEREAS, the Board agrees with DOB that the 1990 Permit was valid for the period of July 6, 1990 to April 15, 1991; and

Vesting Criteria

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

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

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which

measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, the Board notes that there is a long history of development at the site and that there have been several owners since the expiration of the permit on April 15, 1991; and

WHEREAS, however, since the common law standard requires that the Board only consider work completed pursuant to a valid permit, and DOB has determined that the only valid permit is the 1990 Permit, the Board will only consider construction performed pursuant to that permit; and

WHEREAS, at hearing, the Board directed the applicant to seek out records as to the amount of construction completed, the amount of expenditures associated with that construction performed up until April 15, 1991, and the amount of loss which would result if the right to proceed under the prior zoning were not permitted; and

WHEREAS, as to substantial construction, the applicant states that prior to April 15, 1991, 85 percent of construction was completed on the Building; and

WHEREAS, the applicant contacted the contractor who aided the prior owner and the contractor supported the applicant's assertion as to the amount of work completed as of the expiration of the 1990 Permit; and

WHEREAS, the prior project architect was contacted but he no longer had records of the job; and

WHEREAS, the applicant represents that the following work was completed under the valid permit: excavation, demolition, foundation work, a masonry one-story shell, with rough plumbing, electrical, and some interior finishes; and

WHEREAS, the Board notes that the applicant was unable to document the precise history of the construction, but it accepts (1) the statements as to the completed work, (2) records reflecting that work had commenced, and (3) records of the sale of the property which suggest that there was development at the site at the time of various property transactions; and

WHEREAS, the Board also notes that no stop work orders were issued either prior to the issuance of the 1990 Permit or in the intervening years before construction resumed in 2006; and

WHEREAS, thus, in the absence of evidence to the contrary, the Board concludes that a significant amount of construction was completed pursuant to the 1990 Permit within the prescribed timeframe; and

WHEREAS, further, the Board accepts the testimony from those familiar with the Building that 85 percent of the Building was completed in 1991; and

WHEREAS, the Board recognizes that work was performed since the expiration of the 1991 Permit, but has not considered it due to the failure to meet the threshold permit requirement; and

WHEREAS, the Board has reviewed the representations

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as to the amount and type of work completed before the expiration of the 1990 Permit and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the Building, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, the Board has determined that the degree of work completed by the owner in the instant case is comparable to the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, in light of these cases, the Board has determined that the work performed at the site between July 6, 1990 and April 15, 1991, which includes demolition, excavation, foundation work, and the construction of the shell for a one-story masonry building, can be characterized as substantial; and

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was sufficient to meet the minimum requirements established by case law; and

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

WHEREAS, in the absence of financial records from the prior owner, the applicant has submitted an analysis of construction costs contemporary to the time of construction; and

WHEREAS, the applicant states that the prior owner made qualifying expenditure of approximately \$95,000 out of \$105,000 budgeted for the entire project (these numbers represent a conversion to 1990 costs based on a current multiplier of 1.12; the equivalent 2007 costs for the same work are considerably higher); and

WHEREAS, the Board accepts the expenditure analysis and accepts on its face that a considerable proportion of the total expenditure required for the project, including certain soft costs would have been expended or committed for a building which had been 85 percent completed; and

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

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

WHEREAS, the Board has considered the costs for the following: architectural services, demolition, excavation, infrastructure, construction, and contractor's services; and

WHEREAS, the Board has not considered the expenditures for work performed pursuant to the 2006 Permit; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of \$95,000 associated with the qualifying construction would result if vesting were not

permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the decreased level of return for the project if the amended zoning provisions were imposed; and

WHEREAS, specifically, the applicant notes that the building could not be used for the use it was designed for and represents that it is not appropriate for a conforming use; and

WHEREAS, the Board agrees that the need to demolish and redesign the Building, coupled with \$95,000 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting analysis submitted by the applicant supports this conclusion; and

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

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the requested reinstatement of the 1990 Permit, as amended, and all other related permits necessary to complete construction; and

WHEREAS, the Board notes that its decision is limited to the questions raised as to the common law right to vest and the plans for the Building are subject to DOB review to ensure compliance with all other relevant provisions of the Zoning Resolution, the Administrative Code, or any other laws.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 3068/86, as amended, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 23, 2007.

157-07-BZY

APPLICANT – Sheldon Lobel, P.C., for Blue Diamond Development, LLC, owner.

SUBJECT – Application June 11, 2007 – Extension of time (11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on May 11, 2005. M1-2/R6A, M1-2/R6B and MX-8.

PREMISES AFFECTED – 55 Eckford Street, western side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

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COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Abstain: Commissioner Hinkson.....1

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 a certificate of occupancy for, a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject premises is located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue; and

WHEREAS, the premises is currently located partially within an M1-2/R6A (MX-8) zoning district and partially within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the development complies with the prior R6 (M1-1) zoning district regulations; and

WHEREAS, however, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to 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 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 permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 301756319-01 NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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

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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 Permit, 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 permit includes 100 percent of the foundation, the steel frame for six of the 12 proposed floors, and concrete slab floors for floors one through six; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site showing the steel frame and slab floors for floors one through six; a statement from the project developer describing the completed work; copies of concrete pour tickets; financial records; and copies of cancelled checks; and

WHEREAS, further, the applicant represents that delays in construction resulted from financial hardship, which has now been resolved; and

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

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,379,767, or 17 percent, of the \$7,871,450 cost to complete; and

WHEREAS, as noted, 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, at hearing the Board asked the applicant to address all violations associated with site safety; and

WHEREAS, in response, the applicant submitted a statement, with related photographs, describing how each violation has been corrected; 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, 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 pursuant to ZR § 11-332 to renew Building Permit No. 301756319-01 NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate

of occupancy for one term of two years from the date of this resolution, to expire on October 23, 2009.

Adopted by the Board of Standards and Appeals, October 23, 2007.

212-07-BZY

APPLICANT – Greenberg Traurig by Deirdre A. Carson, Esq., for 163 Charles St. Realty, LLC, owner.

SUBJECT – Application September 12, 2007 – Extension of time (§11-332) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on October 11, 2005. R6A, C1-5 zoning district.

PREMISES AFFECTED – 163 Charles Street, fronting on Charles Street and Charles Lane, between Washington and West Streets, Block 637, Lot 42, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Margo Flug – Greenberg Traurig.

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 under ZR § 11-332, to permit an extension of time for the completion of construction, and obtainment of a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on October 16, 2007, after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Ottley-Brown, and Commissioner Hinkson; and

WHEREAS, the subject premises is located on a through lot with frontage on Charles Street and Charles Lane, between Washington and West Streets in the West Village neighborhood of Manhattan; and

WHEREAS, the premises is currently located within an R6A (C1-5) zoning district; and

WHEREAS, the development complies with the prior C6-2 zoning district parameters as to floor area, stories of commercial height, lot coverage and street wall; and

WHEREAS, however, on October 11, 2005, the City Council voted to adopt the Far West Village Rezoning, which rezoned the site to R6A (C1-5), as noted above, and

WHEREAS, as of that date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on January 31, 2006 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 326-05-BZY, pursuant to ZR § 11-331, and

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WHEREAS, on January 31, 2006 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 328-05-A, pursuant to the common law; and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR §11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to 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 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 permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 103972550-01-AL, (hereinafter, the "Alteration Permit"); and

WHEREAS, the Board has reviewed the record and agrees that the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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 Alteration Permit, 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 permit includes installation of structural steel, interior partitions, mechanical equipment, rough plumbing and electrical wiring and that only minor work remains to be completed; and

WHEREAS, in support of this statement, the applicant has submitted the following: photographs of the site showing the completed building form for the 8-story building with completed façade work and windows in place on both building frontages; mechanicals and building infrastructure; floors; ceilings; and partial interior wall construction; and a statement by the architect enumerating the completed work; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$5,067,379, or 97 percent, out of the \$5,249,633 cost to complete; 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

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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, 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 pursuant to ZR § 11-332 to renew Permit No. 103972550-01-AL, 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 a certificate of occupancy for one term of two years from the date of this resolution, to expire on October 23, 2009.

Adopted by the Board of Standards and Appeals, October 23, 2007.

105-06-A

APPLICANT – Rothkrug Rothkrug and Spector, for Yafa Development, LLC, owner.

SUBJECT – Application May 23, 2006 – Proposed development of a single family home which will lie partially in the bed of a mapped street (Hook Creek Boulevard contrary to General City Law Section 35. Premises is located within an R2 zoning district.

PREMISES AFFECTED – 240-23 128th Avenue, corner of 128th Avenue and Hook Creek Boulevard, Block 12866, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

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, the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402271108, reads in pertinent part:

“Building partially in the bed of a mapped street, BSA Approval Required. This denial is needed as part of the BSA process”; and

WHEREAS, this application requests permission to build a single-family home partially within the bed of a mapped street, Hook Creek Boulevard; and

WHEREAS, a public hearing was held on this application on September 25, 2007, after due notice by publication in the *City Record*, and then to a continued hearing and decision on October 23, 2007; and

WHEREAS, by letter dated October 2, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter dated February 22, 2007, the Fire Department states that it has reviewed the above application and has no objection; and

WHEREAS, by letter dated July 12, 2006, the Department of Environmental Protection (DEP) states that it reviewed the above application and advises the Board that there is an adopted Drainage Plan 42(5), which calls for a future 12-in. diameter combined sewer in Hook Creek Boulevard between 128th Avenue and Brookville Boulevard; and

WHEREAS, DEP also notes that there is an existing 12-in. diameter combined sewer and an existing 8-in. diameter water main at the site; and

WHEREAS, accordingly, DEP requested a survey reflecting the distance between the proposed building and the existing sewers and water mains as well as the width of the mapped street of Hook Creek Boulevard between 128th Avenue

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and Brookville Boulevard; and

WHEREAS, in response to DEP's request, the applicant has provided a revised plan, which reflects the total width of the mapped Hook Creek Boulevard is 89'-8" with a remaining portion with a width of approximately 46'-0", which will be available for the installation, maintenance, and/or reconstruction of the existing 8-in. diameter water main and for the existing and future 12-in. diameter combined sewer; and

WHEREAS, by letter dated October 12, 2007, DEP states that it has reviewed the revised site plan and finds it acceptable; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 7, 2006, acting on Department of Buildings Application No. 402271108, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October 16, 2007," "A1"– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2007.

162-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2852 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 161, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

165-06-A

APPLICANT – Adam Rothkrug, Esq., for Edgewater Developers & Builders, Inc., owner.

SUBJECT – Application July 25, 2006 – Proposed construction of a single family home located partially within the bed of a mapped street (Egdewater Road) contrary to General City Law Section 35. R2 Zoning district.

PREMISES AFFECTED – 2848 Faber Terrace, intersection of Faber Terrace and Proposed Edgewater Road, Block 15684, Lot 61, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

105-07-A thru 108-07-A

APPLICANT – Paul Bonfilio Architect, P.C., for Tom and Angelika Davis, owners.

SUBJECT – Application May 2, 2007 – Proposed construction of four two family semi detached dwellings located within the bed of mapped street (199th) contrary to General City Law Section 35. R3-2 Zoning district.

PREMISES AFFECTED –

198-24 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

198-28 47th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5619, Lot 20.

47-17 199th Avenue, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49.

47-18 199th Street, south side of 47th Avenue, 165.37' west of Francis Lewis Boulevard, Block 5618, Lot 49, Borough of Queens

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio, A. Davis and T Davis.

For Opposition: T. Pouymari, Auburndale Improv. Assn., P DeBona and Warren DeBona

ACTION OF THE BOARD – Laid over to December 4, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 23, 2007
1:30 P.M.**

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

ZONING CALENDAR

80-07-BZ

CEQR #07-BSA-075M

APPLICANT – Sheldon Lobel, P.C., for 319 West LLC, owner. The Lantern Group, Incorporated, lessee.

SUBJECT – Application April 12, 2007 – Variance (§72-21) to permit a nine-story and cellar not-for-profit institution with sleeping accommodations and accessory supportive social service space. The proposal is contrary to community facility floor area (§24-111), wall height, setback, and sky exposure plane (§24-522), rear yard (§24-36), permitted reconstruction to allow the construction of a nine-story community facility building (§54-41). R8 zoning district.

PREMISES AFFECTED – 319 West 94th Street, West 94th Street between Riverside Drive and West End Avenue. Block 1253, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 26, 2007 acting on Department of Buildings Application No. 104694868 reads, in pertinent part:

“Proposed wall height, setback & sky exposure are not permitted and are contrary to ZR 24-522.

Proposed rear yard does not meet minimum requirement, is not permitted, and is contrary to ZR 24-36.

Proposed demolition of existing building is not permitted and is contrary to ZR 54-41;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the three story enlargement of an existing six-story building with cellar for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the setback and sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing non-complying building, contrary to ZR §§ 24-522, 24-36, and 54-41; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on August 21, 2007, with a continued hearing on September 25, 2007, and then to decision on October 23, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application conditioned upon the following:

- (1) that HPD and the applicant meet with a community advisory board regarding the safety of tenants during construction;
- (2) that a memorandum of understanding be executed between the existing tenants and the applicant; and

WHEREAS, City Council Member Brewer testified in favor of this application; and

WHEREAS, representatives of Neighborhood in the Nineties Block Association (“Neighborhood in the Nineties”) and other local residents testified in opposition to this application; and

WHEREAS, this application is brought on behalf of The Lantern Group (an affiliate of Audubon Housing Development Fund Corporation, MiCasa HDFC and Friends in the City), a not-for-profit entity; and

WHEREAS, the site’s lot area is 7,565 sq. ft., with 75 feet of frontage on the northern side of West 94th Street, approximately 214 ft. east of Riverside Drive; and

WHEREAS, the site is currently improved upon with a dumbbell-shaped six-story non-complying New Law Tenement Class A Building, occupied as a Single Room Occupancy (“SRO”); and

WHEREAS, the building currently measures approximately 31,578 sq. ft. in floor area (FAR 4.17) and contains 149 rooming units, pursuant to a Certificate of Occupancy dated September 9, 1949, of which 52 units are occupied, and

WHEREAS, the applicant proposes to rehabilitate and enlarge the existing structure for use as a 140-unit community facility, with one unit for an on-site superintendent; and

WHEREAS, the proposed building will have a total community facility floor area of 45,418 sq. ft. and a total FAR of 6.00, which are permitted as of right, and

WHEREAS, the proposed building will have a street wall height along West 94th Street of 88 feet (85 feet is the maximum permitted) without a setback (a 20’-0” foot setback is the minimum required); a total height of 99 feet, and a rear yard of 13’-1” (30’-0” is the minimum required), and will require the substantial demolition of the existing building; and

WHEREAS, the applicant originally filed an application for a 10-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109’-6”, a total height of 109’-6”, and 150 units, which was modified after discussions with community residents to the current proposal; and

WHEREAS, the applicant represents that the variance

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request is necessitated in part by the programmatic needs and in part by the conditions on the subject site – namely -- the existing obsolete building, which will be retained; and

WHEREAS, as to the programmatic needs, the applicant represents that the community facility's proposed housing program, to be located on floors two through nine, will provide 52 studio apartments and 88 SRO units to meet the housing needs of (i) homeless single adults (40% of the units, approximately 56 units) and (ii) low-income adults currently living in the surrounding community (60% of the units, approximately 84 units); and

WHEREAS, the applicant states that the community facility's social service component, to be located on a portion of the cellar and ground floors, will include therapeutic, educational and employment services administered by a staff to include case managers, psychiatric social workers, an independent living skills specialist, a housing intake and outreach coordinator, vocational/educational counselor, nutritionist, program director and residence coordinators; and

WHEREAS, the applicant notes that the housing and social services program was designed in collaboration with New York City's Housing Development Corporation (HDC) and Department of Housing Preservation and Development (HPD), which are financing the development of the proposed community facility; and

WHEREAS, the applicant submitted a letter to the Board from HPD stating that the project funding was conditioned on providing a minimum of 140 dwelling/rooming units at the approved level of public subsidy, beyond which the project would be infeasible; and

WHEREAS, the applicant further notes that HPD and HDC program requirements also dictate the minimum unit sizes, the number of bathrooms and kitchenettes, and the volume of community space to be provided within the proposed building; and

WHEREAS, the applicant states that, in addition to creating 140 affordable units, its mission also includes preventing the displacement and relocation of the 52 current tenants, who are predominately elderly and low-income, and

WHEREAS, the applicant further states that it could not bear the cost to relocate and rehouse the tenants during the construction of the facility; and

WHEREAS, the applicant represents that, as their relocation is neither financially feasible nor consistent with its mission, the existing tenants must be housed within the building while the community facility would be constructed; and

WHEREAS, the applicant asserts therefore, that (i) the existing building cannot be demolished and (ii) that the number of dwelling units and the associated waivers requested are required to comply with funders' requirements; and

WHEREAS, the applicant states that the following unique physical conditions of the existing building create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: (1) its dumbbell shaped floorplate, (2) the existing

non-complying rear yard, and (3) the non-complying non-fireproof nature of the building; and

WHEREAS, as to the dumbbell-shaped footprint, the floorplate results in an irregular and inefficient floorplate with court yards of approximately 20 feet by 30 feet at the east and west;

WHEREAS, the applicant states that this irregular floorplate generates an excessive amount of hallway circulation space in comparison to the floorplate of a more typical square-shaped existing structure; and

WHEREAS, the applicant notes that the inefficient floorplate results in an inability to use space that would otherwise have been available; and

WHEREAS, the applicant further notes that the inefficient floorplate constrains the programmatic space needs, which require the development of at least 140 studio apartments and SRO units and accessory social services space, from being accommodated within the existing structure; and

WHEREAS, notwithstanding the noted inefficiencies of the floorplate, the applicant states that it is compelled to retain the existing building in order to retain the existing tenants; and

WHEREAS, accordingly, the applicant proposes to enlarge the existing building; and

WHEREAS, the applicant further states that the cost to modify the building to conform to all relevant zoning regulations as well as to accommodate the programmatic space needs would far exceed its development budget, and require the relocation of the existing tenants;

WHEREAS, the applicant has determined that accommodating its program needs within the building's footprint would require the construction of a vertical enlargement; and

WHEREAS, as to enlargement of the existing building, the applicant states that the existing court yards constrain the development of an as of right building that can accommodate its program needs; and

WHEREAS, the applicant further states that a complying development would require a front setback at the seventh floor and a thirty-foot rear yard for the enlarged portion of the building; and

WHEREAS, as to the existing rear yard, the applicant notes that the rear yard with a depth of 13'-1" is an existing non-complying condition; and

WHEREAS, the ground through sixth floors of the existing building encroach by 16'-10" into the rear yard; and

WHEREAS, the applicant provided drawings showing an as of right 12-story structure with the required front setback and rear yard; and

WHEREAS, the applicant represents that the resulting building would have consequently smaller floorplates and would result in approximately twenty fewer units than are required to meet its programmatic needs; and

WHEREAS, as to the fire safety of the existing building, the applicant states that the building is a non-complying, non-fireproof Class 3 structure; and

WHEREAS, the applicant represents that the existing Building Code requires that a newly-constructed nine-story building be fireproof; and

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WHEREAS, the applicant states that in order to create a fireproof structure that integrates the enlargement with the existing building, the replacement of the entire wood joist structural system, as well as antiquated plumbing, electrical, fire alarm and sprinkler systems and the installation of internal fire stairs and a code compliant elevator are required; and

WHEREAS, the applicant further states that the scope of this reconstruction necessitates the replacement of approximately 80 percent of the floor area of the existing building; and

WHEREAS, under ZR § 54- 41 no more than 75 percent of the floor area can be replaced in the reconstruction of an existing building; and

WHEREAS, at the hearing, the Board questioned whether the anticipated structural work required the replacement of more than 75 percent of the floor area of the existing wood joist structural system of the building with a new non-fireproof steel and concrete floor structure; and

WHEREAS, to respond to the Board's concern, the applicant sought a reconsideration from the Department of Buildings for the proposed replacement of 80 percent; and

WHEREAS, in response, on September 10, 2007, the Deputy Borough Commissioner of the Buildings Department, denied a request for reconsideration, stating, "Proposed reconstruction exceeds permitted in ZR 54-41; 80% > 75%;" and

WHEREAS, the applicant states that a waiver of street wall height, setback and sky exposure plane and rear yard requirements are necessary to develop the 140 units and social services space required to fulfill its programmatic mission; and

WHEREAS, the Board finds that replacement of more than 75 percent of the floor area is appropriate and necessary to improve the safety of the building; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the Lantern Group's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the proposed use, floor area and total height are permitted as of right under the zoning regulations and that the number of proposed units is fewer than the number permitted under the existing certificate occupancy, and

WHEREAS, the applicant states that the proposed street wall waiver would allow the building to rise to the eighth floor, to a height of 88 feet high along the West 94th Street street line; and

WHEREAS, the applicant notes that the zoning regulations permit a street wall height of 85 feet, and that a wall

height increase of three feet over what is permitted is minor and compatible with neighborhood character; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor; and

WHEREAS, the applicant states that the building's eighth story will be recessed with a mansard and series of dormer elements and suggests that these design elements mitigate the building height by providing a visual break and making the building appear to be only eight stories; and

WHEREAS, the applicant represents that the setback and rear yard waivers are required because the enlargement would rise upward and extend from the existing front and rear walls; and

WHEREAS, the Board agrees that the encroachment into the required rear yard is compensated by the gain in light and air as a result of the reduced height of the building; and

WHEREAS, local residents raised issues at hearing concerning the scale of the proposed building and its compatibility to the neighborhood context; and

WHEREAS, the applicant states that the proposed bulk and height of the building will not be out of context with surrounding buildings, pointing out that the subject site is flanked by six and seven-story multiple dwelling buildings and that a 21-story residential building is located on the northeast corner of 94th Street and Riverside Drive, and a 16-story residential building is located directly to its south; and

WHEREAS, the applicant provided information in the record depicting an as of right enlargement which rises to 128 feet or 12 stories, containing the same square footage as the proposed development, but which included only 122 dwelling/rooming units instead of the 140 units which would be created by the proposed project; and

WHEREAS, the applicant represents that a complying development would be forced to set back from the street line at the eighth floor, as well as set back from the rear by 30 feet from the seventh floor; and that these setbacks in bulk would necessarily result in a twelve-story building, three stories higher than that proposed; and

WHEREAS, the Board notes that the a building constructed as of right under the zoning regulations would be considerably taller than that proposed; and

WHEREAS, the applicant additionally notes that the existing building has not been well-maintained and that the proposed development will provide for its renovation and continued maintenance; and

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

WHEREAS, the applicants states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site and in the uniqueness posed by its programmatic needs; and

WHEREAS, the Board finds that the hardship herein was

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not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the applicant originally filed an application for a 10-story building which sought waivers to the floor area ratio (for a 6.70 FAR), floor area of 50,666 sq. ft., a street wall height of 109'-6", a total height of 109'-6", and 150 units, and

WHEREAS, in response to concerns raised by the Community Board and others, the applicant withdrew the floor area variance request and amended its proposal to instead seek to construct the building currently proposed with an FAR of 6.00, floor area of 45,418 sq. ft., a street wall height of 88'-0", a total height of 99'-0" and 140 units; and

WHEREAS, the Board finds that the requested wall height, sky exposure plane, setback, rear yard, and floor area demolition waivers are the minimum necessary to allow the applicant to fulfill its programmatic needs; and

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

WHEREAS, a concern was raised at the hearing as to whether property owners had received the required notice of hearing; and

WHEREAS, the applicant provided proof that it had secured the list of property owners within a 400-foot radius of the proposed project and sent letters of notification to them in a timely manner, in conformance with BSA notification procedures; and

WHEREAS, however, at the hearing of September 25, 2007 it was learned that the Department of Finance had the wrong address for one owner -- the New York City Department of Education (DOE) -- due to a change in its official address; and

WHEREAS, the Board closed the hearing on September 25, 2007 to other witnesses, but stated in the record that the hearing would be reopened for testimony by the DOE, after its proper notification; and

WHEREAS, the applicant subsequently notified the DOE on October 3, 2007 at its proper address; and

WHEREAS, after the hearing was closed, a letter was submitted by the president of the parent/ teachers association ("PTA") of nearby Public School 75 requesting that the hearing be continued to hear concerns about the homeless persons to be served by the project, particularly given its proximity to the local school; and

WHEREAS, a letter was also submitted by legal counsel for Neighborhood in the Nineties requesting that the hearing be continued because the applicant had allegedly: (a) failed to disclose that the target population could include persons with histories of mental illness or substance abuse, information relevant to a review of the project's potential environmental impacts under CEQR and to the neighborhood character "C" finding required by ZR § 72-21; and (b) failed to provide proper notice to the DOE; and

WHEREAS, on October 23, 2007, the Board reopened the hearing to accept the written submissions by the PTA and Neighborhood in the Nineties and to permit representatives of the DOE to testify; and

WHEREAS, the Board notes that the defective notice to the DOE was corrected on October 3, 2007 and the DOE had a meaningful opportunity to be heard on October 23, 2007, nearly three weeks later, when the Board reopened the hearing to permit its representatives to testify; and

WHEREAS, no representative of the DOE testified on October 23, 2007; and

WHEREAS, as to the PTA's request to continue the hearing to hear concerns about the proposed target population, the Board notes that the proposed use is as of right; and

WHEREAS, the Board further notes that the proposed variance seeks only a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, as pertains to the request to reopen the hearing by Neighborhood in the Nineties to hear concerns regarding the proposed target population, the Board notes that neighborhood residents had the opportunity to speak at hearings on August 21, 2007 and October 5, 2007 concerning the proposal; and

WHEREAS, as pertains to the alleged failure to disclose facts material to the environmental review; and

WHEREAS, based on the technical guidelines for CEQR, the proposed project, which entails a reduction to 141 units from the 149 units permitted by the certificate of occupancy, does not trigger the additional analysis of the impacts of the community facility on socioeconomic conditions or neighborhood character; and

WHEREAS, as noted above, the use is allowed as of right and the proposed variance seeks only a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, the Board therefore concludes that that disclosure of the target population to be housed by the community facility would therefore not be "material" to the environmental review, and

WHEREAS, as pertains to the "C" finding to be made under ZR § 72-21, the Board is required to find that the grant of the variance will not alter the essential neighborhood character, impair the use or development of adjacent property or be detrimental to the public welfare; and

WHEREAS, the variance seeks a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations; and

WHEREAS, the target population to be served by a community facility would be immaterial to the consideration of the impacts on neighborhood character implicated by the grant of a waiver of street wall height, setback, sky exposure plane and rear yard requirements of the zoning regulations under §72-21; and

WHEREAS, the Board therefore declined to reopen the hearing for testimony by the public concerning the proposed target population; and

WHEREAS, the project is classified as unlisted action pursuant to Section 617.13 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental

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review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA075M, dated April 10, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, within an R8 zoning district, the three story enlargement of an existing six-story building with cellar for a community facility with sleeping accommodations and accessory social service space that exceeds the street wall height, does not provide the required setbacks, encroaches into the sky exposure plane, does not provide the required rear yard, and demolishes more than 75 percent of the interior floor area of an existing building, contrary to ZR §§ 24-522, 24-36, and 54-41; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2007" – (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a community facility floor area of 45,418 sq. ft.; a total of 141 dwelling units; a total FAR of 6.00, a street wall height of 88 feet without a setback, a total height of 99 feet, and a rear yard of 13'-1";

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2007.

188-07-BZ

CEQR #08-BSA-009M

APPLICANT – Friedman & Gotbaum, LLP, for Hilton Hotels Corporation, owner; Spa Chakra, LLC, lessees.

SUBJECT – Application August 2, 2007 – Special Permit (§§73-03 & 73-36) – To allow a Physical Culture Establishment in portion of an existing building (19th floor & p/o lobby level) in a C5-2.5/C5-3/C6-6 ZD.

PREMISES AFFECTED – Waldorf-Astoria, 301 Park Avenue, entire block bounded by Park & Lexington Avenues and East 49th & 50th Streets, Block 1304, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Lori Cuisinier.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 29, 2007, acting on Department of Buildings Application No. 104697856, reads in pertinent part:

“The proposed Physical Culture Establishment use on the 19th floor and portion of the first floor lobby of the building in a C5-2.5/C5-3/C6-6 district is not permitted pursuant to Section 32-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2.5/C5-3/C6-6 zoning district, the establishment of a physical culture establishment (PCE) in the lobby floor and 19th floor of an existing 43-story hotel building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 25, 2007 after due notice by publication in *The City Record*, and then to decision on October 23, 2007; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the entire block bounded by Park Avenue on the west, Lexington Avenue on the east, East 50th Street on the north and East 49th Street on the south; and

WHEREAS, the site is occupied by a 43- story hotel building, the Waldorf-Astoria; and

WHEREAS, the PCE will occupy approximately 13,810 sq. ft. of floor area on the 19th floor and approximately 960 sq. ft. of floor area on the lobby floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for the practice of massage within a full

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service day spa, as well as facilities for classes, instruction and programs for physical improvement, and related facilities; and

WHEREAS, the proposed hours of operation are: Monday through Friday, 9:00 a.m. to 9:00 p.m. and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and

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

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA009M, dated August 30, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2.5/C5-3/C6-6 zoning

district, the establishment of a physical culture establishment in the lobby floor and 19th floor of an existing 43-story hotel building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 30, 2007"- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 23, 2017;

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

THAT all massages shall be performed by New York State licensed massage therapists;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2007.

378-04-BZ

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

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

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

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for deferred decision.

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16-07-BZ

APPLICANT – Juan D. Reyes, III, for Daytop Village, Inc., owner.

SUBJECT – Application January 12, 2007 – Special Permit (§73-44) to permit a reduction in required parking for a Use Group 4A ambulatory and diagnostic treatment center located in M1-1 and C1-2 (R2) zoning districts.

PREMISES AFFECTED – 2614 Halperin Avenue, Halperin Avenue between Blandell Avenue and Williamsburg Road, Block 4074, Lot 11, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Juan D. Reyes, III, and John Strauss.

For Opposition: Marianne LaCroce, Marie Lacroce and Anthony LaCroce.

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 November 20, 2007, at 1:30 P.M., for decision, hearing closed.

52-07-BZ

APPLICANT – Lewis Garfinkel, R.A., for Egal Shasho, owner.

SUBJECT – Application February 23, 2007 – Special Permit (§73-622) for the enlargement of an existing one family detached residence. This application seeks to vary open space and floor area (23-141); perimeter wall height (23-361) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1576 East 27th Street, west side of East 27th Street, Block 6773, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lewis Garfinkel.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

78-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Phyllis Balsam, owner; Shape-N-Up Fitness Club, LLC; lessee.

SUBJECT – Application April 12, 2007 – Special Permit (§73-36) to allow the operation of a PCE on the first floor of a two-story commercial building. The proposal is contrary to section 42-00. M1-1 district.

PREMISES AFFECTED – 2515 McDonald Avenue, east side of McDonald Avenue, between Avenues W and X, Block 7173, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Laid over to October 23, 2007, at 1:30 P.M., for continued hearing.

48-07-BZ

APPLICANT – Alfonso Duarte, for Jerry Trianfafillou, owner.

SUBJECT – Application February 20, 2007 – Variance (§72-21) for the enlargement of an existing single family residence on an undersized lot which seeks to vary (23-47) less than the required rear yard and (23-141(b)) for lot coverage in an R2A zoning district.

PREMISES AFFECTED – 7-12 126th Street, west side 90' south of 7th Avenue, Block 3970, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to December 11, 2007, at 1:30 P.M., for continued hearing.

110-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Crosby Landmark Corporation, owner.

SUBJECT – Application May 3, 2007 – Special Permit under § 73-63 to allow the enlargement of a non-residential building. M1-5B district.

PREMISES AFFECTED – 53 Crosby Street, east side of Crosby Street between Spring Street and Broome Street, Block 482, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 20, 2007, at 1:30 P.M., for decision, hearing closed.

144-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Yuta Shlesinger, owner.

SUBJECT – Application May 30, 2007 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage, (§23-141) and side yards (§23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 3810 Bedford Avenue, southwest corner of Bedford Avenue and Quentin Road, Block 6807, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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 November 20, 2007, at 1:30 P.M., for decision, hearing closed.

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for 8701 Fourth Avenue, LLC, owner.

SUBJECT – Application June 8, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to section 32-00 of the Zoning Resolution. C4-2A zoning district.

PREMISES AFFECTED – 8701 Fourth Avenue, southeast corner of Fourth Avenue and 87th Street, Block 6050, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for decision, hearing closed.

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center, Inc., owner.

SUBJECT – Application June 12, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment on the second floor of a two-story commercial building. The proposal is contrary to 32-00. C8-2 district.

PREMISES AFFECTED – 2402 86th Street, south corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for decision, hearing closed.

211-07-BZ

APPLICANT – Eric Palatnik, P.C., for Dave Weiss, owner.

SUBJECT – Application September 7, 2007 – Special

Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1149 East 22nd Street, north of Avenue K, south of Avenue J, Block 7604, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 27, 2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.