# BULLETIN

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

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# DIRECTORY



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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

**JANUARY 30, 2007, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 30, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**52-55-BZ**
APPLICANT – Carl A. Sulfaro, Esq., for Bouck Oil Corp., owner.
SUBJECT – Application November 28, 2006 – Amendment, filed pursuant to §11-412 of the zoning resolution, of previously approved automotive service station with accessory uses located in a C1-2/R5 zoning district. Application seeks to permit the erection of a one story enlargement to an existing building to be used as an accessory convenience store.
PREMISES AFFECTED – 1255 East Gun Hill Road, northwest corner of Bouck Avenue, Block 4733, Lot 72, Borough of Bronx.
**COMMUNITY BOARD #12BX**

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**240-55-BZ**
APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC, owner; Helm Bros., lessee.
SUBJECT – Application November 16, 2006 – Extension of Time/Waiver to complete construction to permit the erection of a second story (5,000 sq. ft.) to the existing (UG6) commercial building (auto repair shop, sales & exchange of vehicles and products) which expired on April 29, 2005, located in a C2-2(R6B) & R4 zoning district.
PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.
**COMMUNITY BOARD #11Q**

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**258-90-BZ**
APPLICANT – Sheldon Lobel, P.C., for John Isikli, owner.
SUBJECT – Application December 13, 2006 – Extension of Time to obtain a Certificate of Occupancy for the operation of a restaurant and banquet hall (UG9) in an R5 zoning district which expired on December 7, 2006.
PREMISES AFFECTED – 2337 Coney Island Avenue, east side, between Avenue T and Avenue U, Block 7315, Lot 73, Borough of Brooklyn.
**COMMUNITY BOARD #15BK**

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**30-00-BZ**
APPLICANT– Sheldon Lobel, P.C., for Sand Realty Group, Inc., owner.
SUBJECT – Application October 13, 2006 – Extension of term/Waiver of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) within an R7-2 zoning district.
PREMISES AFFECTED – 458 West 166th Street, north side of West 166th Street, between Amsterdam Avenue and Edgecomb Avenue, Block 2111, Lot 57 (aka 53-55, 57, 71-73), Borough of Manhattan.
**COMMUNITY BOARD #12M**

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**104-02-BZ**
APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties, LLC., owner; Helms Brothers, lessee.
SUBJECT – Application November 16, 2006 – Extension of Time to complete construction and waiver of the rules which expired on August 13, 2006 for the construction of a new car preparation building (Use Group 16B) at an existing automobile storage facility in a C-3 zoning district.
PREMISES AFFECTED – 23-40 120th Street, west side of 120th Street, between 25th Avenue and 23rd Avenue, Block 4223, Lot 21, Borough of Queens.
**COMMUNITY BOARD #7Q**

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**APPEALS CALENDAR**

**172-06-A**
APPLICANT – Adam Rothkrug, Esq., for Paul F. DeMarinis, owner.
SUBJECT – Application August 11, 2006 – Proposed construction of a two family dwelling located within the bed of mapped streets( 20th Ave.) which is contrary to Section 35 of the General City Law .R3-1 Zoning District
PREMISES AFFECTED – 157-05 20th Avenue, south side of 20th Avenue, east of Clintonville Street, Block 4750, Lot 10, Borough of Queens.
**COMMUNITY BOARD #7Q**

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# CALENDAR

**JANUARY 30, 2007, 1:30 P.M.**

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

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**ZONING CALENDAR**

**425-05-BZ**
APPLICANT– Steven Sinacori of Stadtmauer & Bailkin, for Essol Realty, LLC, owner.
SUBJECT – Application December 28, 2005 – Variance (§ 72-21) to allow a proposed three-story residential building with ground floor community facility use to violate applicable requirements for floor area and FAR (§ 23-141c and § 24-162), front yard (§ 24-34), side yards (§24-35), lot coverage (§ 23-141 and § 24-111) and minimum distance between legally required windows and lot lines (§23-86(a) . Proposed development will contain five (5) dwelling units and three (3) parking spaces and is located within an R4 zoning district.
PREMISES AFFECTED – 2409 Avenue Z, north side of Avenue Z, Bedford Avenue to the east, East 24th to the west, Block 7441, Lots 1 & 104, Borough of Brooklyn.
**COMMUNITY BOARD #15BK**

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**23-06-BZ**
APPLICANT– Sheldon Lobel, P.C., for Kehilat Sephardim, owner.
SUBJECT – Application February 9, 2006 – Variance (§72-21) to legalize, in an R4 zoning district, the expansion of an existing three-story building currently housing a synagogue and accessory Rabbi's apartment. The proposal is requesting waivers for side yards (Section 24-35) and front yards (Section 24-34).
PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.
**COMMUNITY BOARD #8Q**

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**31-06-BZ**
APPLICANT– Sheldon Lobel, P.C., for Frank Falanga, owner.
SUBJECT – Application February 24, 2006 – Zoning variance (§72-21) to allow the legalization of an automotive collision repair shop (Use Group 16) in an R3-1/C1-2 district; proposed use is contrary to ZR sections 22-00 and 32-00.
PREMISES AFFECTED – 102-10 159th Road, south side of 159th Road near the intersection of 192nd Street and 159th Road, Block 14182, Lot 88, Borough of Queens.
**COMMUNITY BOARD #10Q**

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**178-06-BZ**
APPLICANT– The Law Office of Fredrick A. Becker, for Zurich Holding, Co., LLC, owner; Samson International Inc. dba Nao Spa, lessee.
SUBJECT – Application August 16, 2006 – Special Permit (§73-36) to allow the operation of a Physical culture Establishment/Spa at the subject premises. The spa is located in portions of the cellar, first floor and second floor of a multi-story, mixed use building.
PREMISES AFFECTED – 609 Madison Avenue, southeast corner of Madison Avenue and East 58th Street, Block 1293, Lot 50, Borough of Manhattan.
**COMMUNITY BOARD #5M**

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**218-06-BZ**
APPLICANT – The Law Office of Fredrick A. Becker, for Tower Plaza Associates, Inc., owner; TSI East 48 Inc. d/b/a New York Sports Club, lessee.
SUBJECT – Application August 30, 2006 – Special Permit pursuant to Z.R. 73-36 to allow the operation of an existing PCE located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building. The Premises is located in C1-9 (TA), R8B, and R10 zoning districts. The proposal is contrary to Z.R. 32-01 (a).
PREMISES AFFECTED – 885 Second Avenue, westerly side of Second Avenue between East 47th Street and 48th Street, Block 1321, Lot 22, Borough of Manhattan.
**COMMUNITY BOARD # 6M**

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**268-06-BZ**
APPLICANT– Omnipoint Communications Inc., for Mokom Sholom Cemetery Assoc., owner; Omnipoint Communications Inc., lessee.
SUBJECT – Application October 2, 2006 – Special Permit for non-accessory radio tower under (§73-30). In an R-4 district, on a lot consisting of 714,600 SF, and located in a portion of Mokom Sholom Cemetery, permission sought to erect an 80' stealth flagpole disguised as a radio tower for public utility wireless communications.
PREMISES AFFECTED – 80-35 Pitkin Avenue, 150 east of the intersection of Pitkin Avenue and 80th Street, Block 9141, Lot 20, Borough of Queens.
**COMMUNITY BOARD #10Q**

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**275-06-BZ**
APPLICANT– Friedman & Gotbaum, LLP, by Shelly S. Friedman, Esq., for 410-13 West LLC, owner.
SUBJECT – Application October 11, 2006 – Variance (§72-21) to allow a proposed commercial office building (UG 6) to violate §43-28 (rear yard equivalent regulations for through lots) in an M1-5 district.
PREMISES AFFECTED – 408-414 West 13th Street and 13-15 Little West 12th Street, south side of West 13th Street, 124.16' west of the corner formed by the intersection of Ninth Avenue and West 13th Street, Block 645, Lots 33, 35, 51, Borough of Manhattan.
**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

**REGULAR MEETING**
**TUESDAY MORNING, JANUARY 9, 2007**
**10:00 A.M.**

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

The motion is to approve the minutes of regular meetings of the Board held on Tuesday morning and afternoon, October 17, 2006 as printed in the bulletin of October 26, 2006, Vol. 91, Nos. 39 and 40. If there be no objection, it is so ordered.

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**SPECIAL ORDER CALENDAR**

**615-57-BZ**
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application October 10, 2006 – Extension of term for ten years, waiver of the rules for a gasoline service station (Exxon) which expired on June 5, 2003 and an extension of time to obtain a certificate of occupancy in an R-4 zoning district.
PREMISES AFFECTED – 154-11 Horace Harding Expressway, between Kissena Boulevard and 145th Place, Block 6731, Lot 1, Borough of Queens.
**COMMUNITY BOARD #7Q**
APPEARANCES –
For Applicant: Josh Rinesmith.
**ACTION OF THE BOARD –** Application granted on condition.
THE VOTE TO GRANT:
Affirmative: Chair Srinivasan, Vice Chair 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, an extension of time to obtain a certificate of occupancy, and an extension of term for a previously granted variance for a gasoline service station, which expired on June 5, 2003; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in *The City Record*, with a continued hearing on December 12, 2006, and then to decision on January 9, 2007; and

WHEREAS, Community Board, 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of Horace Harding Expressway between Kissena Boulevard and 145th Place; and

WHEREAS, the site is located in an R4 zoning district and is improved upon with a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance for the alteration of an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on January 19, 1994, the grant was amended to permit the addition of one diesel pump and the alteration of the existing accessory building to accommodate a convenience store; the term was also extended for ten years from the expiration of the prior grant; and

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

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

WHEREAAS, additionally, the applicant requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained by the previous owner after the most recent amendment and extension of term; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy appropriate with certain conditions as 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, as adopted on January 14, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 5, 2003 to expire on June 5, 2013, and to permit an extension of time to obtain a certificate of occupancy, to expire on October 9, 2007, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 10, 2006'–(12) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 5, 2013;

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

THAT a certificate of occupancy shall be obtained within nine months of the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 400032255)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**304-82-BZ**
APPLICANT – Bryan Cave, LLP, for Dansar, LLC, owner.
SUBJECT – Application October 6, 2006 – Re-open and

amend an existing variance (§72-21) granted in 1984 for the conversion of floors two through nine in a commercial building to residential use with an existing commercial (UG6) on the first and cellar floors in an M1-5M zoning district.

PREMISES AFFECTED – 36 East 22nd Street, south side of East 22nd Street, 205' west of the corner of Park Avenue, south and East 22nd, Block 850, Lot 54, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Ivan Sconfeld.

**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 an existing variance, to allow for the conversion of the second through ninth floor of a commercial building; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

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

WHEREAS, Community Board 5, Manhattan, recommends disapproval of this application, contending that any hardship arising from the vacancy of the commercial building was self-created, due to a failure to maintain the building; and

WHEREAS, the subject tax lot (Lot 54) is located on the south side of East 22nd Street between Park Avenue South and Broadway, and has a lot area of 2,592 sq. ft.; and

WHEREAS, the subject tax lot is occupied by a nine-story, 118'-0" high commercial building, with retail use on the ground floor and offices on the ninth floor, a floor area of 20,701 sq. ft., a Floor Area Ratio of 8.1, and a rear yard of 6'-3"; and

WHEREAS, Lot 54 is part of a larger zoning lot, also comprised of Lots 44, 55, and 28; and

WHEREAS, the zoning lot is partially within a C6-4A zoning district and partially within a M1-5M zoning district, though the subject tax lot is entirely within the M1-5M district; and

WHEREAS, on May 1, 1984, under the subject calendar number, the Board granted a variance that allowed the construction of a 27-story with penthouse residential building on another portion of the zoning lot; and

WHEREAS, the granted variances related to floor area, sky exposure plane, rear yard, minimum distance between buildings, and lot area per room; and

WHEREAS, none of the variances relate to the subject building, which continued to be used for retail and office purposes; and

WHEREAS, further, the subject building did not contribute floor area to the zoning lot, since it is overbuilt; and

WHEREAS, the applicant now proposes the conversion of the subject building's second through ninth floors; and

WHEREAS, the proposal is to convert approximately 19,886 sq. ft. of commercial floor area to residential use, with eight residential units; the ground floor would remain in retail use; and

WHEREAS, because the subject building is located entirely within the M1-5M zoning district where residential use is not permitted and because the zoning lot as a whole is under Board jurisdiction, further Board action is required; and

WHEREAS, since the prior action contemplated continuing commercial revenue from the subject building in order to sustain the predicted economic return over the entire zoning lot, a new filing was not deemed necessary; and

WHEREAS, nevertheless, the applicant addressed all of the findings in relation to the proposed conversion; and

WHEREAS, the applicant notes that the Board previously found that the zoning lot was unique and posed an unnecessary hardship, given its unusual shape, location within two zoning districts, and varied buildings; and

WHEREAS, the applicant also notes that the subject building is unique in of itself, given its narrow frontage and small floor plates; and

WHEREAS, the applicant states that such small floor plates are obsolete for modern office tenants; and

WHEREAS, the Board agrees that the zoning lot remains uniquely burdened, and that the subject building suffers its own inherent hardship; and

WHEREAS, the applicant submitted a feasibility study that illustrates that because of the building's shortcomings, "as is" office and retail usage of the building will not realize a reasonable return; and

WHEREAS, in response to a question from the Board at hearing, the applicant also clarified that the comparable buildings used in conjunction with this study were similar buildings in terms of square footage and design, and were located in comparable zoning districts; and

WHEREAS, the applicant also states that the owner attempted to market the building but was unsuccessful; the building is now nearly vacant; and

WHEREAS, at the request of the Board, the applicant submitted documentation of the marketing attempts; the marketing consisted of print advertisements and listings with commercial brokers; and

WHEREAS, the applicant states that the addition of eight new residential units would not negatively impact the established mixed-use character of the neighborhood, with many residential buildings in immediate proximity to the subject building; and

WHEREAS, finally, the applicant notes that the

requested conversion would allow the owner to realize a reasonable return from the subject building itself, and is also required in order to achieve the contemplated return over the entire zoning lot, which, as noted above, contemplated continued revenue from full commercial occupancy of the building; and

WHEREAS, accordingly, the Board finds that the proposed conversion comports with its prior grant; and

WHEREAS, the Board notes in passing that the proposed conversion of the building is allowed in the M1-5M zoning district through an action of the City Planning Commission pursuant to Article I, Chapter V of the ZR and ZR § 74-782, upon a showing of a good faith marketing efforts for a specific time period and a showing that the change in use will not impact industrial users, existing tenants or the surrounding neighborhood; and

WHEREAS, however, since the site is under the jurisdiction of the Board, the instant filing was deemed the appropriate course of action, so long as these concerns were addressed; and

WHEREAS, as noted above, the owner has engaged in such good faith marketing and the Board has determined that the proposed conversion will not have any adverse effects on nearby conforming uses or the character of the neighborhood; and

WHEREAS, finally, the Board notes that the fee owner of the subject building authorized the instant application; authorization by other parties in interest to the larger zoning lot is waived, as the waiver requested here (a use conversion) has no bearing on the bulk waivers previously granted; and

WHEREAS, based upon its review of the record, the Board finds that the proposed conversion is appropriate.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on May 1, 1984, so that as amended this portion of the resolution shall read: "to permit the conversion of the second through ninth floors of an existing nine-story commercial building to residential use, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received October 6, 2006'–(6) sheets; and *on further condition*:

THAT the building shall comply with all light and air standards applicable to conversion under Article I, Chapter V of the Zoning Resolution;

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

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

(DOB Application No. 104528423)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**190-92-BZ**

APPLICANT – Alfonso Duarte, for 180 Tenants Corp., owner; Waterview Parking Inc., lessee.

SUBJECT – Application August 15, 2006 – Extension of Term to allow the use of surplus parking spaces for transient parking which was granted contrary to Section 60, Sub. 1b of the Multiple Dwelling Law. R10A and R8B zoning district.

PREMISES AFFECTED – 180 East End Avenue, north side between East 88th and East 89th Streets, Block 1585, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

**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, and an extension of the term for a previously granted variance for a transient parking garage, which expired on October 5, 2003; and

WHEREAS, a public hearing was held on this application on December 5, 2007 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, the subject premises is located on the east side of East End Avenue between East 88th Street and East 89th Street; and

WHEREAS, the site is occupied by a 20-story with penthouse building; and

WHEREAS, the site is located partially within an R10A zoning district and partially within an R8B zoning district; and

WHEREAS, there are a total of 60 parking spaces in the lower cellar and 55 parking spaces in the upper cellar; and

WHEREAS, on May 8, 1962, the Board granted a waiver, under BSA Cal. Nos. 1659-61-BZ and 1660-61-A, to allow transient parking spaces in the lower and upper cellar accessory garage of the subject building for a term of 21 years; and

WHEREAS, on October 5, 1993, under the subject calendar number, the Board reinstated the grant and granted an extension of term to permit transient parking; and

WHEREAS, the applicant submitted a photograph of the required sign, explaining building residents' right to recapture parking spaces; and

WHEREAS, the applicant also noted the location of the sign on the site plan; and

WHEREAS, at hearing the Board asked the applicant to provide a photograph demonstrating that the sign is affixed to

the wall in a permanent fashion in a conspicuous location; and

WHEREAS, the applicant provided photographic evidence that the sign is installed and permanently affixed to the wall; and

WHEREAS, based upon its review of the record, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

*Therefore it is Resolved* that the Board of Standards and Appeals, *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution having been adopted on October 5, 1993, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from October 5, 2003, to expire on October 5, 2013; *on condition* that that all work shall substantially conform to drawings filed with this application and marked 'Received November 20, 2006'–(1) sheet and 'December 4, 2006'–(1) sheet; and *on further condition*:

THAT this term shall expire on October 5, 2013;

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

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

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

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

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

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

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

(DOB Application No. 104183571)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**17-93-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lincoln Square Commercial Holding, owner; MP Sports Club Upper Westside LLC on behalf of Reebok-Sports Club/NY, Ltd., lessee.

SUBJECT – Application October 13, 2006 – Extension of term of a previously granted special permit (§73-36) for a physical culture establishment (Reebok Sports Club/NY Ltd.) which expired on June 7, 2004; a waiver to file more than a year after the expiration of the term; extension of time to obtain a permanent certificate of occupancy and an amendment for the change in management/ownership and the hours of operation located in a C4-7(L) zoning district.

PREMISES AFFECTED – 160 Columbus Avenue (a/k/a 1992 Broadway), Block 1139, Lots 24, 30, Borough of Manhattan.

**COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Elizabeth Larsen.

**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, approval of a change in ownership, a change in the hours of operation, an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a previously granted variance for a Physical Culture Establishment (PCE), which expired on June 7, 2004; and

WHEREAS, a public hearing was held on this application on November 21, 2006 after due notice by publication in *The City Record*, with a continued hearing on December 12, 2006, then to decision on January 9, 2007; and

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

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the block bounded by Broadway, Columbus Avenue, West 67th Street, and West 68th Street; and

WHEREAS, the site has a lot area of approximately 55,462.22 sq. ft., is occupied by a 47-story mixed-use building, and is located within a C4-7 zoning district within the Special Lincoln Square District; and

WHEREAS, the PCE occupies portions of the first floor and floors three through eight; and

WHEREAS, the PCE is operated as Reebok Sports Club; and

WHEREAS, on June 7, 1994, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE; and

WHEREAS, on March 28, 1995, under the subject calendar number, the Board approved an amendment to allow a running track on the roof of the fourth floor and several other modifications to the site; and

WHEREAS, the instant application seeks approval of a change in the hours of operation to open on weekdays one half hour earlier than the prior approval; and

WHEREAS, the proposed hours of operation are Monday through Thursday, 5:00 a.m. through 11:00 p.m.; Friday, 5:00 a.m. through 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. through 9:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant to notify the residents of the building about the requests and about the hearing date; and

WHEREAS, the applicant represented that a notice regarding the application and the public hearing had been mailed to all residents of the subject building; and

WHEREAS, the Board notes that five consents and one objection regarding the operation of the facility were received; and

WHEREAS, further, the applicant also requests an approval of a change in ownership; and

WHEREAS, the Department of Investigation has performed a background check on the new 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 applicant also seeks an extension of time to obtain a permanent certificate of occupancy; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 7, 1994, so that as amended this portion of the resolution shall read: "to grant approval of a change in ownership, a change in the hours of operation, an extension of time to obtain a permanent certificate of occupancy, and an extension of the term for a term of ten years from the expiration of the last grant to expire on June 7, 2014; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, and that all work and site conditions shall comply with drawings marked 'Received October 13, 2006' –(7) sheets and 'October 17, 2006'–(1) sheet; and *on condition*:

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

THAT this grant shall be limited to a term of ten years from June 7, 2004, expiring June 7, 2014;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:00 a.m. through 11:00 p.m.; Friday, 5:00 a.m. through 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. through 9:00 p.m.;

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

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

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

THAT all PCE-related HVAC systems 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. 100363562)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**16-95-BZ**

APPLICANT – Stadtmauer Bailkin, LP, for STA Parking Group, owner.

SUBJECT – Application September 29, 2006 – Extension of Time to complete construction, which expired on October 23, 2003, on a previously granted variance for a UG8 parking garage with accessory auto repairs and an amendment to permit the legalization of the ramps within the existing parking garage and the relocation of the accessory office from the first floor to the second floor in an R8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, a/k/a 433 East 76th Street, located between East 76th and 77th Street, between York and First Avenue, Block 1471, Lot 31, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Calvin Wong.

**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, an amendment to permit modifications to the plans, and an extension of time to complete construction of an enlargement to an existing three-story garage building, which expired on October 23, 2003; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

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

WHEREAS, the subject zoning lot is located on a through lot with frontage on East 76th Street and East 77th Street, between York Avenue and First Avenue, and is located within an R8B zoning district; and

WHEREAS, in 1921, under BSA Cal. No. 396-21-BZ, the Board permitted the conversion of the subject building from

a horse stable to a public parking garage; and

WHEREAS, in 1922, under BSA Cal. No. 1061-22-BZ, the Board permitted an enclosed third-story enlargement of the subject building, which was not built; and

WHEREAS, on March 23, 1999, under the subject calendar number, the Board permitted the enlargement of the existing structure pursuant to ZR § 11-412; at that time, the Board also granted an appeal, under BSA Cal. No. 17-95-A, regarding required egress and fire ratings; and

WHEREAS, most recently, on February 12, 2002, the Board granted an extension of time to complete construction; and

WHEREAS, the applicant now requests an additional extension of time to complete construction; and

WHEREAS, the applicant represents that approximately 70 percent of the required construction has been completed, including the enclosure of the third floor and the underpinning; and

WHEREAS, the applicant represents that construction has not been completed due to damage to the adjacent building's foundation at the commencement of the construction; and

WHEREAS, further, the applicant represents that additional time was required to conduct thorough geotechnical tests to prevent additional damage, and to complete the required underpinning; and

WHEREAS, the applicant states that all but one of the DOB violations related to damage to the adjacent building's foundation have been resolved and that the remaining violation will be resolved when construction resumes; and

WHEREAS, additionally, the applicant proposes to legalize modifications to the previously-approved plans; and

WHEREAS, these modifications include the installation of two ramps – one from the first floor to the cellar and one from the cellar to the sub-cellar - and the relocation of the accessory office space from the first floor to the second floor; and

WHEREAS, the applicant states that these modifications result in a reduction of one parking space on the second floor, three parking spaces in the cellar, two parking spaces in the sub-cellar, and a reduction in the total number of parking spaces from 133 to 127; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and the modifications to the approved plans 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, said resolution having been adopted on March 23, 1999, so that as amended this portion of the resolution shall read: "to permit a two-year extension of time to complete substantial construction from the date of this grant, to expire on January 9, 2009, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received November 17, 2006'–(2) sheets and 'December 28, 2006'–(2) sheets; and *on further condition*:

THAT the conditions from the prior resolution not specifically waived by the Board shall remain in effect; 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. 100664372)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**56-96-BZ**

APPLICANT– Agusta & Ross, Rainer Group of New York, LLC, owner; Fountain of Youth Health Spa, Inc., lessee.

SUBJECT – Application April 23, 2006 – Extension of Term and waiver of the rules for a Special Permit (§73-36) to allow a Physical Culture Establishment (Fountain of Youth Health Spa) in an M1-1 zoning district which expired on March 1, 2006, and an amendment to permit a change in the hours of operation and a change in ownership/control of the PCE.

PREMISES AFFECTED – 32-02 Linden Place, southerly block front of 32nd Avenue, between Farrington Street and Linden Place, Block 4950, Lot 48, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES – None.

**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, an amendment to the hours of operation, approval of a change in operator, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on March 1, 2006; and

WHEREAS, a public hearing was held on this application on December 12, 2006 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

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

WHEREAS, Community Board, 7, Queens, recommends approval of this application on condition that: the term be limited to five years, the parking lot and sidewalk be maintained in a clean condition, there be no changes to the facility, there be no change in the operation and services provided by the facility, and there be no changes in the hours of operation; and

WHEREAS, the subject premises is located on the south side of 32nd Avenue, between Farrington Street and Linden Place; and

WHEREAS, the site is occupied by a one and two-story commercial building and an accessory parking lot, and is located in an M1-1 zoning district; and

WHEREAS, the PCE currently occupies a total of 13,684.47 sq. ft. on portions of the first and second floors of the subject building; and

WHEREAS, on September 23, 1997, the Board granted a special permit pursuant to ZR § 73-36, to permit the continued operation of the PCE for a term of nine years to expire on March 1, 2006; and

WHEREAS, on December 11, 2001, the Board granted a two-year extension of time to obtain a certificate of occupancy; and

WHEREAS, the instant application seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and seeks approval of this change; 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, finally, the applicant seeks an extension of the hours of operation from 10:00 a.m. until 10:00 p.m., daily to 7:00 a.m. to 1:00 a.m., daily; and

WHEREAS, at hearing, in response to the Community Board's concerns about the maintenance of the facility and the hours of operation, the Board asked the applicant about the other uses at the site; and

WHEREAS, the applicant responded that other uses at the site include a billiard parlor and an administrative office for the Police Department; and

WHEREAS, the applicant represents that the billiard parlor is open 24 hours a day and that the police access the office periodically throughout the night; and

WHEREAS, the applicant states that the accessory parking lot is open 24 hours a day to accommodate these uses; and

WHEREAS, the applicant represents that it has met with concerned neighbors and a tenants' association to resolve any concerns about the use and operation of the site; and

WHEREAS, the applicant notes that there are not any residential uses in the immediate vicinity; and

WHEREAS, the Board directed the applicant to submit testimony into the record documenting the outreach meetings with the community; and

WHEREAS, the Board directed the applicant to repair the fence; and

WHEREAS, in response, the applicant repaired the fence and submitted photographs reflecting the repair and improved parking lot conditions; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, change in operator, and amendment to the approved plans are appropriate with certain conditions as 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 September 23, 1997, so that as amended this portion of the resolution shall read: "to permit a change in the hours of operation, a change in the operator, and an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received April 25, 2006'–(2) sheets and 'October 30, 2006'-(3) sheets; and *on further condition*:

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

THAT this grant shall be limited to a term of ten years from March 1, 2006, expiring March 1, 2016;

THAT the hours of operation shall be limited to 7:00 a.m. to 1:00 a.m., daily;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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. 400604459)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**48-05-BZ**

APPLICANT – Wachtel & Masyr, LLP, for Bethune West Associates, LLC, owner.

SUBJECT – Application October 30, 2006 – Request for a re-opening and amendment of a previously granted zoning variance that allowed a fifteen- (15) and three- (3) story residential building with ground floor retail use (UG 6), sixty-four (64) dwelling units and sixty (60) accessory parking spaces in C1-7A and C1-6A zoning districts. The proposed amendment includes the following: (1) ground floor level to change from retail to residential use; (2) dwelling units to increase from 64 to 84; (3) minor increase in lot coverage; and (4) modifications to the building's height and setback.

PREMISES AFFECTED – 469 West Street, a/k/a 70 Bethune Street, West Street between Bethune Street and West 12th Street, Block 640, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Jerry Johnson and Doris Diether, CB #2.
**ACTION OF THE BOARD** – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson……..……..3
Negative:.....0
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson……..……..3
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow for various modifications to the BSA-approved plans; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to closure and decision on January 9, 2007; and

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

WHEREAS, the subject premises is an irregular "L"-shaped lot, with a lot area of approximately 32,106 sq. ft., with 160'-0" of frontage along West Street (a wide street, a/k/a the West Side Highway), 124'-0" along West 12th Street (a narrow street), and 278'-0" along Bethune Street (a narrow street); and

WHEREAS, previously, on January 10, 2006, the Board granted a variance to permit on the subject lot, which is partially within a C1-7A zoning district and partially within a C1-6A zoning district, the proposed construction of a fifteen and three story mixed-use residential/commercial building, with ground floor retail and an underground accessory parking garage; and

WHEREAS, the particular waivers concerned floor area ratio ("FAR"), lot coverage, side yards, height and setback, and off-street parking; and

WHEREAS, the project as approved was for a mixed-use mid-rise 15-story plus penthouse building fronting on West Street midway between Bethune and West 12th Streets, with a three-story base at the corners formed by the intersection of West Street with the two side streets, a twelve story residential tower centered along West Street, setting back approximately 35 ft. from West 12th Street and 25 ft. from Bethune Street, and a series of five three-story townhouses fronting on Bethune Street; and

WHEREAS, the building was proposed to contain 64 total dwelling units (including the five townhouses), a height of 186'-9" (including bulkheads, 173'-2" without), a setback on the West Street side at the eighth floor, setbacks on the West 12th and Bethune Streets sides at the fourth floor, with a total FAR of 5.0, a residential FAR of 4.7, a commercial FAR of 0.3, lot coverages of 89% and 98% for the corner lot portions, 61% for the through lot portion and 62% for the interior lot portion; and

WHEREAS, the Board notes that the approved building envelope was the result of negotiation between the applicant and neighboring buildings, as well as elected officials; and

WHEREAS, the applicant now proposes the following modifications: (1) the elimination of commercial floor area on the ground floor, and a reutilization of such floor area for residential units; (2) an increase in the number of dwelling units from 64 to 84; (3) a minor increase in lot coverage; and (4) modifications to the height and setback; and

WHEREAS, as to the use change, the applicant states that the building will now contain only residential use, and the accessory parking has been relocated to a mezzanine level in the main building, with storage and amenity space remaining in the cellar; and

WHEREAS, the Board notes that the elimination of the commercial floor area results in more residential floor area, which drives the increase in dwelling units; and

WHEREAS, the applicant states that the lot coverage of one of the corner lot portions has increased from 89% to 92%, primarily because the edge of the building adjacent to the parking ramp has been straightened; and

WHEREAS, the applicant notes that overall lot coverage has been reduced; and

WHEREAS, the changes to height and setback are illustrated on the BSA-approved plans and described in the statement of facts; however, they can be summarized as follows: (1) the cantilevers on the north and south facades have been eliminated; (2) the height of the West Street building base has been raised to 39.46 ft. from 38.75 ft., which reduces the amount of waiver in the C1-7A district; (3) the height of the townhouse portion has been raised to 40.39 ft. from 38.75 ft., which eliminates the street wall waiver in the C1-6A district; (4) the setback in the West Street portion of the building has been lowered to 63.14 ft. (from 83.58 ft.), which complies with C1-7A district regulations; (5) the setback has been reduced to 10 ft. in depth (it previously varied from 11.87 ft. to 16.7 ft.); and (6) the upper portion of the West Street building façade has been realigned to be parallel with West Street above the fifth floor; and

WHEREAS, the applicant represents that all of these changes either comply with applicable zoning district regulations or reduce the degree of the previously granted waivers; and

WHEREAS, the Board notes that the bulkhead has also been enlarged, but that it still complies with applicable zoning regulations, including those concerning permitted obstructions; and

WHEREAS, finally, because the bulkhead in the easternmost townhouse has been relocated, no side yard objection remains; and

WHEREAS, the applicant states that overall floor area is the same as was previously approved; and

WHEREAS, the applicant notes that the proposed changes are the result of a new architectural design; and

WHEREAS, at the request of the Board, the applicant provided documentation of discussion of the proposed changes with the parties who appeared in the prior proceeding; and

WHEREAS, none of these parties appeared or made

submissions in opposition to this application; and

WHEREAS, based upon its review of the record, the Board finds that the proposed changes are appropriate, given that they either eliminate or reduce the previously granted waivers.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on January 10, 2006, so that as amended this portion of the resolution shall read: "to permit (1) the elimination of commercial floor area on the ground floor, and a reutilization of such floor area for residential units; (2) an increase in the number of dwelling units from 64 to 84; (3) a minor increase in lot coverage; (4) modifications to the height and setback, and to permit modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked 'Received October 30, 2006'–sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: 84 total dwelling units (including the five townhouses), a height of 186'-9" (including bulkhead, 173'-2" without); setbacks as illustrated on the BSA-approved plans; a total FAR of 4.97; a residential FAR of 4.97; and lot coverages of 92% and 98% for the corner lot portions; 55% for the through lot portion and 55% for the interior lot portion;

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

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

(DOB Application No. 104044133)

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**300-05-A**

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

SUBJECT – Application July 6, 2006 – Reconstruct and enlarge an existing one family dwelling which lies within the bed of a mapped street (B209th Street) contrary to Section 35 of the General City Law. R4 Zoning District.

PREMISES AFFECTED – 995 Bayside, east of Bayside, north of West Market Street, Block 16350, Lot 300, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Michael Harley.

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 402178754, reads in pertinent part:

"A1 – The proposed enlargement is on a site where the building and lot are located in the bed of mapped street. Therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law."; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, the subject site was previously granted a waiver under Section 36 of the General City Law on February 7, 2006 ; and

WHEREAS, by letter dated August 2, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated August 21, 2006, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated November 21, 2006, the Department of Transportation states that it has reviewed the above project and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated June 16, 2006, acting on Department of Buildings Application No. 402178754 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 July 6, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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, January 9, 2007.

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**733-56-BZ**
APPLICANT – Cozen O'Connor Attorneys, for S & B Bronx Realty Associates, owner.
SUBJECT – Application October 26, 2006 – Extension of Term and a waiver of the rules to a previously granted variance to allow a parking lot (UG8) in an R7-1 residential zoning district which expired on December 6, 1997.
PREMISES AFFECTED – 283 East 164th Street, northwest corner of East 164th Street, and College Avenue, Block 2432, Lot 19, Borough of The Bronx.
**COMMUNITY BOARD #4BX**
APPEARANCES –
For Applicant: Peter Geis.
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 January 30, 2007, at 10 A.M., for decision, hearing closed.

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**717-60-BZ**
APPLICANT – Eric Palatnik, P.C., for Sun Refining & Marketing, owner.
SUBJECT – Application September 25, 2006 – Extension of term/waiver of the rules for a Variance (§72-21) for an existing (UG 16) gasoline service station (Sunoco) in an R3-2/C1-1 zoning district which expired on June 1, 2006.
PREMISES AFFECTED – 2052 Victory Boulevard, southeast corner of Bradley Avenue, Block 724, Lot 1, Borough of Staten Island.
**COMMUNITY BOARD #1SI**
APPEARANCES –
For Applicant: Adam W. Rothkrug.
**ACTION OF THE BOARD –** Laid over to February 13, 2007, at 10 A.M., for continued hearing.

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**308-79-BZ**
APPLICANT – Stuart A. Klein, Esq., for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Assoc. LLC; lessee.
SUBJECT – Application July 3, 2006 – Extension of Term/Amendment/Waiver – To allow the continuation of an existing Physical Culture Establishment, located in a R7-1 (LH-1) zoning district, which was granted pursuant to §73-36 of the zoning resolution. The amendment seeks to make minor interior modifications.
PREMISES AFFECTED – 43 Clark Street, a/k/a 111 Hicks Street, south west corner of Hicks and Clark Streets, Block 231, Lot 19, Borough of Brooklyn.
**COMMUNITY BOARD #2BK**
APPEARANCES –
For Applicant: Adam Rothkrug.
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 January 23, 2007, at 10 A.M., for decision, hearing closed.

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**60-82-BZ**
APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.
SUBJECT – Application August 1, 2006 – Extension of Term Filed pursuant to §11-411 of the zoning resolution for an automotive service station (Use Group 16) with accessory uses located within a C2-3/R7X zoning district. The term expired on July 7, 2006.
PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.
**COMMUNITY BOARD #2Q**
APPEARANCES –
For Applicant: Adam Rothkrug.
**ACTION OF THE BOARD –** Laid over to February 27, 2007, at 10 A.M., for continued hearing.

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**230-98-BZ**
APPLICANT – Agusta & Ross, for John and Gaetano Iacono, owners.
SUBJECT – Application October 16, 2006 – Extension of Time to obtain a Certificate of Occupancy which expired on April 30, 2003 for an automotive repair shop and the sale of used cars (2) in an R5 zoning district.
PREMISES AFFECTED – 5810-5824 Bay Parkway, northeasterly corner of Bay Parkway and 59th Street, Block 5508, Lot 44, Borough of Brooklyn.
**COMMUNITY BOARD #12BK**
APPEARANCES –
For Applicant: Mitchell Ross.
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 January 23, 2007, at 10 A.M., for decision, hearing closed.

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**244-01-BZ**
APPLICANT– Sheldon Lobel, P.C., for Gregory Pasternak, owner.
SUBJECT – Application October 24, 2006 – Extension of Time to complete construction which expired on September 24, 2006 for the legalization of residential units in an existing building located in an M1-2/R6A zoning district.
PREMISES AFFECTED – 325 South 1st Street, a/k/a 398/404 Rodney Street, northeast corner of intersection formed by Rodney Street and South First Street, Block 2398, Lot 28, Borough of Brooklyn.
**COMMUNITY BOARD #1BK**
APPEARANCES –
For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD –** Laid over to February 6, 2007, at 10 A.M., for continued hearing.

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**44-06-BZ, Vol. II**
APPLICANT– Rothkrug, Rothkrug & Spector, for Philip & Laura Tuffnel, owner.
SUBJECT – Application October 13, 2006 – Rehearing of a previously granted variance (§72-21) the vertical enlargement of an existing single family home, to permit notification of affected property owners and public officials in an R3A zoning district.
PREMISES AFFECTED – 150-24 18th Avenue, south side of 18th Avenue, 215' east of intersection with 150th Street, Block 4687, Lot 43, Borough of Queens.
**COMMUNITY BOARD #7Q**
APPEARANCES –
For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to January 30, 2007, at 10 A.M., for decision, hearing closed.

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**APPEALS CALENDAR**

**153-06-A**
APPLICANT – Sheldon Lobel, P.C., for Paul Ullman, owner.
SUBJECT – Application July 12, 2006 – Appeal challenging the Department of Buildings interpretation that Quality Housing Bulk regulations may be utilized by a single-family residence seeking to enlarge in a non-contextual zoning district.
PREMISES AFFECTED – 159 West 12th Street, Seventh Avenue and Avenue of the Americas, Block 608, Lot 69, Borough of Manhattan.
**COMMUNITY BOARD #14M**
APPEARANCES –
For Applicant: Josh Rinesmith.
**ACTION OF THE BOARD –** Appeal denied.
THE VOTE TO GRANT –
Affirmative: .....0
Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Ottley-Brown…….3
THE RESOLUTION:

WHEREAS, the instant appeal is brought by the owner of 157 West 12th Street (hereinafter, "Appellant"), a neighbor to the subject premises (hereinafter, the "Owner's Lot"); and

WHEREAS, on November 6, 2006, DOB issued a building permit (No. 104306528; the "Permit") for an enlargement and conversion of the existing three-story, two-family townhouse on the Owner's Lot to a single-family residence (the "Enlargement"); and

WHEREAS, the appeal challenges a DOB final determination as to the Permit, signed by Acting Manhattan Borough Christopher M. Santulli, P.E., dated June 19, 2006 and issued to Appellant (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> "This letter is in reference to your June 6, 2006 letter regarding the above-referenced matter and former Manhattan Borough Commissioner Laura Osorio's interpretation of the Quality Housing Program (QHP) bulk regulations.
>
> Ms. Osorio's previous determination, that the QHP bulk regulations may be utilized by a single-family residence seeking to enlarge in a non-contextual zoning district, is hereby *affirmed*. This is the Department's final decision on this matter and it may be appealed to the Board of Standards and Appeals pursuant to New York City Charter § 666(6)(a)."; and

WHEREAS, DOB clarified that this determination applies not just to the Owner's Lot, but globally; and

WHEREAS, in addition to challenging the applicability of the QHP bulk regulations to single-family homes, Appellant also argues that the plans associated with the Permit do not even show compliance with the QHP regulations; and

WHEREAS, a public hearing was held on this appeal on October 31, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, Appellant, the Owner, and DOB were represented by counsel in this proceeding; and

WHEREAS, another nearby neighbor appeared in support of the appeal; and

WHEREAS, counsel to the Department of City Planning submitted a letter supporting the position of DOB; and

WHEREAS, the Owner's Lot has a lot area of 2,151.04 sq. ft. and is occupied by a three-story two-family townhouse; and

WHEREAS, both the Owner's Lot and Appellant's lot are within an R6 non-contextual zoning district; and

WHEREAS, on December 7, 2005, the Owner applied to DOB to enlarge the existing townhouse and to convert it from a two-family to a single-family residence under DOB Application No. 104306528; and

WHEREAS, in connection with this application, the Owner sought to utilize the QHP bulk regulations; and

WHEREAS, the ZR provisions describing the QHP are found at ZR § 28-00, *et seq.* (Article II, Chapter 8); and

WHEREAS, ZR § 28-01 sets forth the applicability of Chapter 8 and provides "[t]he Quality Housing Program is a specific set of standards and requirements for buildings containing residences."; and

WHEREAS, more specifically, the QHP is a set of zoning parameters that may be utilized in certain instances on an optional basis in non-contextual districts unless specifically prohibited; and

WHEREAS, ZR § 28-01 provides that for non-contextual districts such as the subject R6 zoning district, when the QHP is elected, the bulk regulations applicable to the QHP as set forth in Article II, Chapter 3 may be applied as an alternative to the normal bulk regulations, also set forth in Article II, Chapter 3; and

WHEREAS, additionally, certain amenities may be required to be provided, as set forth in Article II, Chapter 8; and

WHEREAS, after the application for the Enlargement was filed, Appellant wrote DOB, contending that the QHP bulk regulations could not be used for a single-family home; and

WHEREAS, after some internal discussion at DOB, the Final Determination was issued in response to this contention; and

WHEREAS, Appellant then filed this appeal; and

WHEREAS, subsequently, DOB issued the Permit on November 6, 2006; and

WHEREAS, as noted above, Appellant makes two primary arguments in support of the position that DOB should revoke the Permit: (1) the QHP bulk regulations apply only to multi-family housing (three units or more) and not to single and two-family dwellings; and (2) even if the QHP bulk regulations are determined to apply to such dwellings, the Enlargement is non-complying as to floor area, FAR, and lot coverage; and

WHEREAS, as to the application of the QHP bulk regulations, Appellant first argues that the intent of the QHP was to promote the construction of multi-family housing, rather than single and two-family dwellings; and

WHEREAS, Appellant cites to the general purpose provision of ZR § 28-00, which provides in part that "the Quality Housing Program is established to foster the provision of multi-family housing"; and

WHEREAS, Appellant argues that this provision makes clear that the provision of single-family homes was not an intended goal of the QHP, and that QHP regulations are thus not applicable to them; and

WHEREAS, however, DOB argues that ZR § 28-00 is not inconsistent with the application of the QHP to single or two-family dwellings; and

WHEREAS, DOB notes that not every project that is eligible to use the QHP bulk regulations will necessarily satisfy each element of the general purpose section; and

WHEREAS, for example, ZR § 28-00(b) provides that the QHP is established to foster the provision of multi-family housing that "provides on-site recreation space to meet the needs of its occupants"; and

WHEREAS, however, ZR § 28-31, which concerns "Required Recreation Space", specifically provides that recreation space is only required in QHP developments, enlargements, extensions, or conversions with nine or more dwelling units; and

WHEREAS, DOB properly concludes that it was contemplated that there would be some multi-family housing built pursuant to the QHP regulations that will not provide on-site recreation space and therefore not satisfy this goal of the purpose section; and

WHEREAS, the Board concurs with DOB that ZR § 28-00 cannot be properly read to be a restriction on the applicability of the QHP regulations to single-family homes; and

WHEREAS, this provision, like other general purpose sections in the ZR, explains what the goals of the subsequently listed operative provisions are; and

WHEREAS, the Board observes that general purpose sections in the ZR do not list exclusions; and

WHEREAS, further, to the extent that such a section would contain a specific exclusion, this would be obvious from the plain language; and

WHEREAS, any language that explicitly provides that the QHP does not apply at all to single-family homes is noticeably absent from ZR § 28-00; and

WHEREAS, further, the Board agrees that the application of the QHP regulations to single-family homes does not compromise or conflict with the goal of fostering multi-family housing; and

WHEREAS, thus, any argument that ZR § 28-00 acts to prohibit applicability of the QHP to single-family homes is erroneous; and

WHEREAS, the Board also finds that Appellant's reliance on ZR 28-01 as evidence that single and two-family homes are excluded from the QHP is misplaced; and

WHEREAS, ZR § 28-01 provides that in contextual districts some QHP requirements will be mandatory for development or enlargement of buildings other than single and two-family homes; and

WHEREAS, however, this provision does not prohibit the application of the QHP to single-family homes in non-contextual districts; it merely speaks to the mandatory nature of some requirements for multi-family buildings; and

WHEREAS, the Board concludes that the ZR does not contain any explicit prohibition on the applicability of the QHP to single and two-family homes; and

WHEREAS, Appellant also argues that since single and two-family dwellings are not specifically listed as included housing forms in the QHP provisions, they must be excluded; and

WHEREAS, DOB disagrees, noting that the plain language of various provisions leads to a conclusion that the QHP program applies to single-family homes; and

WHEREAS, first, DOB cites to ZR § 23-01, which is listed under the heading "Bulk Regulations for Residential Buildings in Residence Districts" and sets forth the applicability of all bulk regulations in Article II, Chapter 3 of the ZR, which also includes the bulk regulations that are applicable under the QHP; and

WHEREAS, this provision reads in pertinent part: "The bulk regulations of the Chapter apply to any building or other structure…on any zoning lot or portion of a zoning lot located in any Residence District, including all…enlargements."; and

WHEREAS, the subject home meets the ZR § 12-10 definition of "building or other structure" as "any building or structure of any kind."; and

WHEREAS, the home also meets the ZR § 12-10 definition of "residence or residential", which provides that a residence is a "building or part of a building containing dwelling units or rooming units, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels."; and

WHEREAS, thus, the subject home is a residence in a residence district, and the Chapter 3 bulk regulations, including the QHP regulations, are applicable to it; and

WHEREAS, second, DOB cites to specific provisions related to the QHP; and

WHEREAS, specifically, DOB cites to ZR § 28-01, which, as noted above, concerns the applicability of the QHP and provides that the program "is a specific set of standards for buildings containing residences"; and

WHEREAS, again, the definition of "residence" includes single-family homes; and

WHEREAS, DOB also notes that ZR § 28-01 specifically provides that in non-contextual districts "residential developments or residential enlargements" may use the QHP; and

WHEREAS, by definition, a residential enlargement may be of a single or two-family home; and

WHEREAS, finally, the Board observes that certain exceptions to the applicability of the QHP regulations are set forth at ZR § 23-011(c); and

WHEREAS, one of these exceptions (ZR § 23-011(c)(3)) provides that within R6 districts and certain geographically-defined study areas, the QHP does not apply to single-family homes "where more than 70 percent or more of the aggregate length of the blockfronts in residential use on both sides of the street facing each other are occupied by residences."; and

WHEREAS, this provision clearly indicates that under certain circumstances, single-family homes were contemplated to be excluded from the QHP if they were in certain study areas and on blocks as described by this provision; and

WHEREAS, the Board observes that if single-family homes in R6 zoning districts were meant to be excluded altogether from the QHP, as Appellant contends, the exception listed in ZR § 23-011(c)(3) would be redundant and unnecessary; and

WHEREAS, however, there is no reason to presume that the provision is superfluous; thus, ZR § 23-011(c)(3) reinforces the fact that the QHP is applicable to single-family homes; and

WHEREAS, in sum, the Board finds that the plain language of the above-mentioned provisions makes clear that the QHP is applicable to single-family homes; and

WHEREAS, therefore, the Board finds that: (1) Appellant has failed to establish that the QHP provisions expressly exclude single-family homes; and (2) DOB has sufficiently established that the inclusion of single-family homes in the QHP has a textual basis; and

WHEREAS, further, since the plain language of the ZR provides a basis for the applicability of the QHP to single-family homes, a review of the QHP's legislative history is unnecessary; and

WHEREAS, Appellant's secondary argument is that even if the QHP provisions were to apply, the Enlargement does not comply with bulk regulations as to floor area, floor area ratio, and lot coverage; and

WHEREAS, DOB disagrees, stating that the plans submitted with the Permit show full compliance with applicable QHP regulations; and

WHEREAS, Appellant was given the opportunity to review the same plans during the hearing process; and

WHEREAS, Appellant's most recent submission contains the claim that based upon a review of the plans, the calculations for existing and proposed floor area and lot coverage on one of the drawings are incorrect; and

WHEREAS, however, Appellant made no attempt to explain how the calculations are wrong, which precludes Board consideration of this claim; and

WHEREAS, in the absence of any explanation as to why the calculations may reflect a non-compliance with the applicable QHP regulations, the Board must reject Appellant's secondary argument as unsubstantiated and accept DOB's technical review that concludes that the plans show compliance; and

WHEREAS, in sum, the Board concludes as follows: (1) the QHP provisions do apply to the Enlargement; and (2) Appellant has provided no evidence of the Enlargement's alleged non-compliance with the QHP bulk regulations; and

*Therefore it is Resolved* that this appeal, which challenges a Final Determination issued by DOB on June 19, 2006 concerning DOB Permit No. 104306528, is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**154-06-A**

APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.

PREMISES AFFECTED – 357 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Peter Geis.

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

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson……3

THE RESOLUTION:

WHEREAS, these two matters are applications for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R6 zoning district; and

WHEREAS a public hearing was held on this application on October 17, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and

December 5, 2006, and then to decision on January 9, 2007; and

WHEREAS, BSA Cal. No. 154-06-A relates to 357 15th Street and BSA Cal. No. 155-06-A relates to 359 15th Street; the two properties are adjacent to each other; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, the Department of Buildings appeared in opposition to these applications; and

WHEREAS, certain owners of condominium units at the subject premises wrote in support of the application; and

WHEREAS, both of the subject properties are located on the north side of 15th Street between 7th and 8th Avenues; and

WHEREAS, each property is 25 ft. wide by 100 ft. deep, and both are developed with unoccupied four-story, eight-unit buildings; and

WHEREAS, the two properties are contiguous with the property at 392 14th Street; this property is also developed with a four-story, eight-unit building; and

WHEREAS, the applicant states that the developer and owner of the subject premises (hereinafter, the "Developer") purchased the properties in 1998; and

WHEREAS, at this time, the premises was within an R6 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to develop each property with a four-story building and each application was given a separate job number by DOB; and

WHEREAS, the applicant states that by 2000, DOB approved plans for the construction of the three buildings; and

WHEREAS, the three buildings appeared together on the same plan sheet and were part of a single condominium offering plan; and

WHEREAS, the applicant contends that the Developer initially obtained a permit for the building on 14th Street (Permit No. 300799107), finished construction on that building, and received a certificate of occupancy in 2002; and

WHEREAS, on April 30, 2003 (hereinafter, the "Rezoning Date"), the City Council voted to approve a rezoning, which rezoned the premises from R6 to R6B and rendered the one completed building and the two proposed buildings non-complying as to Floor Area Ratio, maximum base height, and maximum building height; and

WHEREAS, on May 7, 2003, the Developer erroneously obtained invalid permits (Permit Nos. 300991540 and 300991577) for the two remaining buildings that are the subject of these applications, and work commenced on the buildings; and

WHEREAS, the work permits were invalid because they authorized work under the prior and inapplicable R6 zoning parameters; and

WHEREAS, on July 20, 2005, DOB issued a letter to the Developer ordering that all work be stopped on construction of the two buildings; and

WHEREAS, the applicant states that neither the Developer nor the project architect received a copy of this letter, and that work continued into late 2005; and

WHEREAS, the applicant states that construction on both buildings is almost completely finished; and

WHEREAS, on March 1, 2006 and on July 6, 2006, DOB determined that the two buildings were not vested pursuant to ZR § 11-331 because no permits had been issued for the construction of each building prior to the Rezoning Date, which is required; and

WHEREAS, the applicant now requests that the Board find that the Developer has obtained a vested right to finish construction on both buildings and obtain certificates of occupancy for each under the prior R6 zoning; and

WHEREAS, in spite of the fact that all work on both buildings was performed impermissibly in the absence of valid permits, the applicant makes the following related arguments in support of the appeals: (1) the plan approvals issued by DOB prior to the Rezoning Date are a sufficient substitute for the actual issuance of a building permit; and (2) the right to finish construction of both buildings was vested pursuant to the "single integrated project theory" ("SIPT"), as established by New York State courts; and

WHEREAS, the applicant also suggests that the equities in the instant applications weigh in favor of the Developer; and

WHEREAS, as to the initial arguments, the applicant states, in sum and substance, that approvals of building permit applications reflect the approval by DOB of the application's compliance with applicable laws, while the permits themselves are only authorizations to construct the already approved building; and

WHEREAS, the applicant states that an approval, therefore, is a more important indicator of whether a proposed construction project should be allowed to vest than an actual work permit; and

WHEREAS, the applicant concludes that under the SIPT, the obtained plan approvals are sufficient to vest the right to finish construction on the two buildings under the R6 zoning; and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval but not issuance of each and every building permit (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss

would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the single completed building and the two subject buildings are a lower-scale version of a single integrated project; and

WHEREAS, the Board agrees that in the SIPT cases, the courts found that it is not necessary that building permits be obtained for each proposed building within the development; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in numerous stages, and it is more logical for permits to be obtained on a plat by plat or phased basis; and

WHEREAS, the applicant argues that the subject development of the three buildings meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing all three buildings, and thus was on notice that they were proposed to be developed as a single integrated development; and

WHEREAS, the applicant also notes that one building is complete, satisfying the requirement that some physical work be completed; and

WHEREAS, the applicant also contends that since the three buildings were the subject of a condominium offering plan, the requirement that some work related to the development that benefits all components was completed is satisfied; and

WHEREAS, more specifically, the applicant notes that the condominium offering plan changed the legal status of the properties, and created certain legal obligations for the unit purchasers; and

WHEREAS, the applicant also claims that the Developer would suffer economic loss if vesting were not found; and

WHEREAS, finally, the applicant states that there is no overriding public concern related to the new R6B zoning sufficient to deny vesting; and

WHEREAS, the applicant concludes that if the Board were to apply the SIPT to the Developer's project, the lack of valid permits for, and the illegal construction of, the two subject buildings could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, first, the Board finds that there does not appear to be any precedent for the application of the SIPT to a development project as small as the one presented here; and

WHEREAS, the SIPT cases concern multi-acre parcels of land with hundreds of proposed units, usually single-family homes; and

WHEREAS, thus, the Board rejects the applicant's arguments because it is not persuaded that the SIPT should be applied to lower-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses three buildings and since the plan approvals for the buildings had already been obtained, the Developer could have easily obtained the permits needed for all three buildings; and

WHEREAS, the Board notes that nothing prevented the Developer from obtaining permits for the two subject buildings prior to the Rezoning Date; and

WHEREAS, this is different than the large-scale multi-plat projects discussed in the SIPT cases, where the acquisition of permits for each and every building is not feasible; and

WHEREAS, in fact, as conceded by the applicant, it was not the scale of the project or the need to install infrastructure that prevented simultaneous or near-simultaneous construction of the three buildings, but a lack of financial resources on the part of the developer; and

WHEREAS, the applicant suggests that the Board may overlook the factual context of the SIPT cases and focus only on the broader theory itself; and

WHEREAS, however, the Board concludes that this would be improper; and

WHEREAS, the Board finds that there is a direct relationship between the size of a project and the degree with which it is spread out over a series of plats and the need to engage in staged development, with issuance of permits occurring on a phased basis in tandem with the construction of common infrastructure; and

WHEREAS, in fact, plat approvals may contain municipally imposed restrictions on the issuance of permits, requiring them to be issued in phases after the installation of infrastructure (see e.g. Ellington Const. Corp. v. Zoning Bd. of Appeals of Incorporated Village of New Hempstead, 152 A.D.2d 365 (1989)) – such a restriction is entirely absent here; and

WHEREAS, instead, although the three properties are contiguous, no physical infrastructure connects the three buildings since none was required to be constructed prior to commencement of construction on any of the buildings; and

WHEREAS, accordingly, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's project; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights, and no vesting may occur pursuant to an invalid permit (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986); Perrotta v.

City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1985)); and

WHEREAS, while the Developer may have expected to receive permits for the two subject buildings, construction is not authorized and vesting may not occur unless and until valid permits are obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer; and

WHEREAS, even assuming *arguendo* that the SIPT applies to this development proposal, the Board notes that its requirements are not met in the instant applications; and

WHEREAS, first, the Board does not consider the condominium offering plan to be the equivalent of physical work that benefits all of the components of the development; and

WHEREAS, while it does create legal obligations for the Developer, it does not benefit all of the components of development in a physical sense, like roads or sewer systems; and

WHEREAS, the Board also observes that there is nothing that physically connects the three buildings; all could stand separately, with independent street access and utilities; and

WHEREAS, second, the construction already completed on the subject buildings could have been adapted to a complying R6B development if the Developer performed adequate due diligence and was aware of the zoning change; and

WHEREAS, the Board notes that foundations, superstructure, and most of the interior are already completed; and

WHEREAS, all of these components could have been adapted, in whole or in part, to a complying R6B building, if only the impermissible construction had not proceeded to the point of near-completion, at a cost of approximately $43,000 in architectural fees; and

WHEREAS, further, the Board is aware that condominium offering plans can be, and often are, amended if there is a change in the development proposal; such amendment and related costs are not extraordinary or exceptional, except perhaps in a situation where a developer, like the one here, fails to conduct appropriate due diligence before entering into contracts for units in a proposed building that does not comply with zoning; and

WHEREAS, here, the applicant has conceded that the cost of such amendment would only be $10,000; and

WHEREAS, as to the loss of revenue from the decrease in sellable floor area, the Board notes that under the SIPT, the test of economic harm relates to the losses that would result from an inability to proceed under the prior zoning; and

WHEREAS, the lack of ability to proceed under the prior zoning in turn relates to an inability to adapt the work already performed to a complying development; and

WHEREAS, the SIPT cases do not make mention of the inability to achieve larger buildings; and

WHEREAS, as noted above, since the two subject properties were undeveloped on the Rezoning Date and no physical infrastructure work had occurred which would have made it impossible to develop the sites in compliance with the R6B zoning, there was no inability to adapt the remainder of the proposal to a complying development; and

WHEREAS, instead, as reflected above, such a change required only minimal outlay; and

WHEREAS, finally, any costs related to the adaptation of the already completed structures in order to comply with the height and FAR parameters of the R6B zoning arise due to the Developer's own due diligence failure, and, as conceded by applicant, cannot be considered in this application; and

WHEREAS, as to the equitable arguments, the applicant, in a submission dated December 27, 2006, lists various reasons why the equities weigh in favor of the Developer; and

WHEREAS, in sum and substance, the applicant points to the plan approval, the economic loss that the Developer might suffer if vesting is denied, and the lack of opposition or complaint about the development and applications; and

WHEREAS, even presuming that each contention is accurate, the Board does not conclude that it must grant the instant applications; and

WHEREAS, without valid permits in place for the subject buildings, the Developer was unauthorized to commence construction; and

WHEREAS, the Board notes that the Developer is charged with constructive knowledge of all changes in law that could affect his development, including zoning changes; and

WHEREAS, that the Developer made an error in not obtaining permits and commencing construction before the Rezoning Date because of this due diligence failure is not a situation that must be remedied by the Board merely because the Developer or others will suffer from this mistake or because no one has opposed these applications; and

WHEREAS, most if not all vesting applications, if denied, result in a detriment to the developer, and the lack of opposition has no bearing on the fundamental requirement that vesting must be predicated on a validly issued permit; and

WHEREAS, finally, the Board notes that it does not possess the equitable powers of a court; and

WHEREAS, in sum, since the Board disagrees with the applicant's arguments, the instant applications must be denied.

*Therefore it is Resolved* that these applications made under BSA Cal. Nos. 154-06-A and 155-06-A, relating to 357 and 359 15th Street, Brooklyn, are hereby denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**155-06-A**

APPLICANT – Cozen O'Connor Attorneys, Flan Realty, LLC, owner.

SUBJECT – Application July 12, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 zoning district. Premises is located in a R6B zoning district.
PREMISES AFFECTED – 359 15th Street, north side of 15th Street, between 7th and 8th Avenues, Block 1102, Lot 70, Borough of Brooklyn.
**COMMUNITY BOARD #6BK**
APPEARANCES –
For Applicant: Peter Geis.
**ACTION OF THE BOARD –** Appeals denied.
THE VOTE TO GRANT –
Affirmative:.....0
Negative: Chair Srinivasan, Vice Chair Collins and Commissioner Hinkson…….3
THE RESOLUTION:

WHEREAS, these two matters are applications for a Board determination that the owner of the premises has acquired a common-law vested right to continue development at the subject premises under regulations applicable to an R6 zoning district; and

WHEREAS a public hearing was held on this application on October 17, 2006 after due notice by publication in *The City Record*, with continued hearings on November 14, 2006 and December 5, 2006, and then to decision on January 9, 2007; and

WHEREAS, BSA Cal. No. 154-06-A relates to 357 15th Street and BSA Cal. No. 155-06-A relates to 359 15th Street; the two properties are adjacent to each other; and

WHEREAS, in the interest of convenience, the two applications were heard concurrently, and the record is the same for both; and

WHEREAS, the Department of Buildings appeared in opposition to these applications; and

WHEREAS, certain owners of condominium units at the subject premises wrote in support of the application; and

WHEREAS, both of the subject properties are located on the north side of 15th Street between 7th and 8th Avenues; and

WHEREAS, each property is 25 ft. wide by 100 ft. deep, and both are developed with unoccupied four-story, eight-unit buildings; and

WHEREAS, the two properties are contiguous with the property at 392 14th Street; this property is also developed with a four-story, eight-unit building; and

WHEREAS, the applicant states that the developer and owner of the subject premises (hereinafter, the "Developer") purchased the properties in 1998; and

WHEREAS, at this time, the premises was within an R6 zoning district; and

WHEREAS, the applicant states that the Developer then filed at DOB to develop each property with a four-story building and each application was given a separate job number by DOB; and

WHEREAS, the applicant states that by 2000, DOB approved plans for the construction of the three buildings; and

WHEREAS, the three buildings appeared together on the same plan sheet and were part of a single condominium offering plan; and

WHEREAS, the applicant contends that the Developer initially obtained a permit for the building on 14th Street (Permit No. 300799107), finished construction on that building, and received a certificate of occupancy in 2002; and

WHEREAS, on April 30, 2003 (hereinafter, the "Rezoning Date"), the City Council voted to approve a rezoning, which rezoned the premises from R6 to R6B and rendered the one completed building and the two proposed buildings non-complying as to Floor Area Ratio, maximum base height, and maximum building height; and

WHEREAS, on May 7, 2003, the Developer erroneously obtained invalid permits (Permit Nos. 300991540 and 300991577) for the two remaining buildings that are the subject of these applications, and work commenced on the buildings; and

WHEREAS, the work permits were invalid because they authorized work under the prior and inapplicable R6 zoning parameters; and

WHEREAS, on July 20, 2005, DOB issued a letter to the Developer ordering that all work be stopped on construction of the two buildings; and

WHEREAS, the applicant states that neither the Developer nor the project architect received a copy of this letter, and that work continued into late 2005; and

WHEREAS, the applicant states that construction on both buildings is almost completely finished; and

WHEREAS, on March 1, 2006 and on July 6, 2006, DOB determined that the two buildings were not vested pursuant to ZR § 11-331 because no permits had been issued for the construction of each building prior to the Rezoning Date, which is required; and

WHEREAS, the applicant now requests that the Board find that the Developer has obtained a vested right to finish construction on both buildings and obtain certificates of occupancy for each under the prior R6 zoning; and

WHEREAS, in spite of the fact that all work on both buildings was performed impermissibly in the absence of valid permits, the applicant makes the following related arguments in support of the appeals: (1) the plan approvals issued by DOB prior to the Rezoning Date are a sufficient substitute for the actual issuance of a building permit; and (2) the right to finish construction of both buildings was vested pursuant to the "single integrated project theory" ("SIPT"), as established by New York State courts; and

WHEREAS, the applicant also suggests that the equities in the instant applications weigh in favor of the Developer; and

WHEREAS, as to the initial arguments, the applicant states, in sum and substance, that approvals of building permit applications reflect the approval by DOB of the application's compliance with applicable laws, while the permits themselves are only authorizations to construct the already approved building; and

WHEREAS, the applicant states that an approval,

therefore, is a more important indicator of whether a proposed construction project should be allowed to vest than an actual work permit; and

WHEREAS, the applicant concludes that under the SIPT, the obtained plan approvals are sufficient to vest the right to finish construction on the two buildings under the R6 zoning; and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval but not issuance of each and every building permit (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep't, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep't, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, the Board observes that the SIPT has been primarily applied to large-scale developments in upstate New York, involving multiple subdivision or plat approvals and numerous buildings; and

WHEREAS, nevertheless, the applicant argues that the single completed building and the two subject buildings are a lower-scale version of a single integrated project; and

WHEREAS, the Board agrees that in the SIPT cases, the courts found that it is not necessary that building permits be obtained for each proposed building within the development; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time; and

WHEREAS, this is because such projects are developed in numerous stages, and it is more logical for permits to be obtained on a plat by plat or phased basis; and

WHEREAS, the applicant argues that the subject development of the three buildings meets the requirements of the SIPT; and

WHEREAS, first, the applicant notes that DOB approved a site plan showing all three buildings, and thus was on notice that they were proposed to be developed as a single integrated development; and

WHEREAS, the applicant also notes that one building is complete, satisfying the requirement that some physical work be completed; and

WHEREAS, the applicant also contends that since the three buildings were the subject of a condominium offering plan, the requirement that some work related to the development that benefits all components was completed is satisfied; and

WHEREAS, more specifically, the applicant notes that the condominium offering plan changed the legal status of the properties, and created certain legal obligations for the unit purchasers; and

WHEREAS, the applicant also claims that the Developer would suffer economic loss if vesting were not found; and

WHEREAS, finally, the applicant states that there is no overriding public concern related to the new R6B zoning sufficient to deny vesting; and

WHEREAS, the applicant concludes that if the Board were to apply the SIPT to the Developer's project, the lack of valid permits for, and the illegal construction of, the two subject buildings could be ignored by the Board; and

WHEREAS, the Board has carefully considered the arguments made by the applicant; and

WHEREAS, first, the Board finds that there does not appear to be any precedent for the application of the SIPT to a development project as small as the one presented here; and

WHEREAS, the SIPT cases concern multi-acre parcels of land with hundreds of proposed units, usually single-family homes; and

WHEREAS, thus, the Board rejects the applicant's arguments because it is not persuaded that the SIPT should be applied to lower-scale development projects such as the Developer's; and

WHEREAS, since the project only encompasses three buildings and since the plan approvals for the buildings had already been obtained, the Developer could have easily obtained the permits needed for all three buildings; and

WHEREAS, the Board notes that nothing prevented the Developer from obtaining permits for the two subject buildings prior to the Rezoning Date; and

WHEREAS, this is different than the large-scale multi-plat projects discussed in the SIPT cases, where the acquisition of permits for each and every building is not feasible; and

WHEREAS, in fact, as conceded by the applicant, it was not the scale of the project or the need to install infrastructure that prevented simultaneous or near-simultaneous construction of the three buildings, but a lack of financial resources on the part of the developer; and

WHEREAS, the applicant suggests that the Board may overlook the factual context of the SIPT cases and focus only on the broader theory itself; and

WHEREAS, however, the Board concludes that this would be improper; and

WHEREAS, the Board finds that there is a direct relationship between the size of a project and the degree with which it is spread out over a series of plats and the need

to engage in staged development, with issuance of permits occurring on a phased basis in tandem with the construction of common infrastructure; and

WHEREAS, in fact, plat approvals may contain municipally imposed restrictions on the issuance of permits, requiring them to be issued in phases after the installation of infrastructure (see e.g. Ellington Const. Corp. v. Zoning Bd. of Appeals of Incorporated Village of New Hempstead, 152 A.D.2d 365 (1989)) – such a restriction is entirely absent here; and

WHEREAS, instead, although the three properties are contiguous, no physical infrastructure connects the three buildings since none was required to be constructed prior to commencement of construction on any of the buildings; and

WHEREAS, accordingly, no reason exists to deviate from the general rule that vesting can only occur where, prior to the zoning change, construction has proceeded pursuant to a valid permit; and

WHEREAS, in sum, the Board concludes that the SIPT does not apply to the Developer's project; and

WHEREAS, the Board notes that the requirement of a validly issued permit is a fundamental requirement for a finding of common law vested rights, and no vesting may occur pursuant to an invalid permit (see e.g. Vil. Of Asharokan v. Pitassy, 119 A.D.2d 404 (1986); Perrotta v. City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1985)); and

WHEREAS, while the Developer may have expected to receive permits for the two subject buildings, construction is not authorized and vesting may not occur unless and until valid permits are obtained; and

WHEREAS, the Board has no authority or desire to rewrite the law to suit the needs of the Developer; and

WHEREAS, even assuming *arguendo* that the SIPT applies to this development proposal, the Board notes that its requirements are not met in the instant applications; and

WHEREAS, first, the Board does not consider the condominium offering plan to be the equivalent of physical work that benefits all of the components of the development; and

WHEREAS, while it does create legal obligations for the Developer, it does not benefit all of the components of development in a physical sense, like roads or sewer systems; and

WHEREAS, the Board also observes that there is nothing that physically connects the three buildings; all could stand separately, with independent street access and utilities; and

WHEREAS, second, the construction already completed on the subject buildings could have been adapted to a complying R6B development if the Developer performed adequate due diligence and was aware of the zoning change; and

WHEREAS, the Board notes that foundations, superstructure, and most of the interior are already completed; and

WHEREAS, all of these components could have been adapted, in whole or in part, to a complying R6B building, if only the impermissible construction had not proceeded to the point of near-completion, at a cost of approximately $43,000 in architectural fees; and

WHEREAS, further, the Board is aware that condominium offering plans can be, and often are, amended if there is a change in the development proposal; such amendment and related costs are not extraordinary or exceptional, except perhaps in a situation where a developer, like the one here, fails to conduct appropriate due diligence before entering into contracts for units in a proposed building that does not comply with zoning; and

WHEREAS, here, the applicant has conceded that the cost of such amendment would only be $10,000; and

WHEREAS, as to the loss of revenue from the decrease in sellable floor area, the Board notes that under the SIPT, the test of economic harm relates to the losses that would result from an inability to proceed under the prior zoning; and

WHEREAS, the lack of ability to proceed under the prior zoning in turn relates to an inability to adapt the work already performed to a complying development; and

WHEREAS, the SIPT cases do not make mention of the inability to achieve larger buildings; and

WHEREAS, as noted above, since the two subject properties were undeveloped on the Rezoning Date and no physical infrastructure work had occurred which would have made it impossible to develop the sites in compliance with the R6B zoning, there was no inability to adapt the remainder of the proposal to a complying development; and

WHEREAS, instead, as reflected above, such a change required only minimal outlay; and

WHEREAS, finally, any costs related to the adaptation of the already completed structures in order to comply with the height and FAR parameters of the R6B zoning arise due to the Developer's own due diligence failure, and, as conceded by applicant, cannot be considered in this application; and

WHEREAS, as to the equitable arguments, the applicant, in a submission dated December 27, 2006, lists various reasons why the equities weigh in favor of the Developer; and

WHEREAS, in sum and substance, the applicant points to the plan approval, the economic loss that the Developer might suffer if vesting is denied, and the lack of opposition or complaint about the development and applications; and

WHEREAS, even presuming that each contention is accurate, the Board does not conclude that it must grant the instant applications; and

WHEREAS, without valid permits in place for the subject buildings, the Developer was unauthorized to commence construction; and

WHEREAS, the Board notes that the Developer is charged with constructive knowledge of all changes in law that could affect his development, including zoning changes; and

WHEREAS, that the Developer made an error in not obtaining permits and commencing construction before the

Rezoning Date because of this due diligence failure is not a situation that must be remedied by the Board merely because the Developer or others will suffer from this mistake or because no one has opposed these applications; and

WHEREAS, most if not all vesting applications, if denied, result in a detriment to the developer, and the lack of opposition has no bearing on the fundamental requirement that vesting must be predicated on a validly issued permit; and

WHEREAS, finally, the Board notes that it does not possess the equitable powers of a court; and

WHEREAS, in sum, since the Board disagrees with the applicant's arguments, the instant applications must be denied.

*Therefore it is Resolved* that these applications made under BSA Cal. Nos. 154-06-A and 155-06-A, relating to 357 and 359 15th Street, Brooklyn, are hereby denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**239-06-A**

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Hugh Ferguson, lessee.

SUBJECT – Application September 13, 2006 – Reconstruction and enlargement of an existing one- family dwelling not fronting a mapped street, contrary to Article 3, Section 36 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 8 Suffolk Walk, west side 110.3' south of Oceanside Avenue, Block 16350, Lots p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: John Ronan.

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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 August 25, 2006, acting on Department of Buildings Application No. 402446108, reads in pertinent part:

> "Proposal to enlarge the existing first floor and construct a new second story on a home which lies within an R4 zoning district but does not front on a mapped street (Suffolk Walk) is contrary to Article 3, Section 36 (2) of the General City Law and must therefore be referred to the Board of Standards & Appeals for approval."; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated August 25, 2006, acting on Department of Buildings Application No. 402446108, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 13, 2006"–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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, January 9, 2007.

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**255-06-A thru 257-06-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bell Building Corp., owner.

SUBJECT – Application September 19, 2006 – Application to permit the construction of a one family dwelling not fronting on mapped street, contrary to General City Law Section 36. R3A zoning district.

PREMISES AFFECTED – 76, 74, 72 Bell Street (a/k/a Wall Street) east side of Bell Street, south of intersection with Fletcher Street, Block 2987, Lots 20, 21, 22, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Adam 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 the Standards and Appeals, January 9, 2007.

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**77-06-A**
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis & Judy Dunne, lessee.
SUBJECT – Application October 16, 2006 – Reconstruction and enlargement of an existing single family dwelling not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law and the upgrade of an existing disposal system in the bed of a private service road contrary to Department of Buildings Policy. R4 zoning district.
PREMISES AFFECTED – 27 Roosevelt Walk, east side Roosevelt Walk 193.04' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.
**COMMUNITY BOARD #14Q**
APPEARANCES –
For Applicant: Loretta Papa.
**ACTION OF THE BOARD –** Appeal granted.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402409700, reads in pertinent part:

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

A2- The private disposal system I is in the bed of a private service road contrary to Department of Buildings policy."; and

WHEREAS, a public hearing was held on this application on January 9, 2007 after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the above project and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402409700, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received October16, 2006"-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**295-06-A**
APPLICANT – Gary Lenhart, RA, for Breezy Point Cooperative Inc., owner; Christine Campisi, lessee.
SUBJECT – Application November 9, 2006 – Proposed reconstruction and enlargement of a single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District.
PREMISES AFFECTED – 22 Graham Place, South side of Graham Place 163.99' east of mapped Beach 203rd Street, Block 16350, Lot 400, Borough of Queens.
**COMMUNITY BOARD #14Q**
APPEARANCES –
For Applicant: Gary Lenhart.
**ACTION OF THE BOARD** – Application granted on condition.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No.402454474, reads in pertinent part:

"A1- The street giving access to the existing building to be altered is not duly placed on the official

map of the City of New York, therefore:

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

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

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated October 10, 2006, acting on Department of Buildings Application No. 402454474, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 9, 2006" – 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);

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, January 9, 2007.

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**296-06-A**

APPLICANT – Gary Lenhart, RA, for Breezy Point Cooperative Inc., owner; Erica & Abert Ashforth, lessee.

SUBJECT – Application November 9, 2006 – Propose reconstruction and enlargement of single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. R4 Zoning District

PREMISES AFFECTED – 37 Beach 222nd Street, East side of Beach 222nd Street 220.92' north of mapped Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Gary Lenhart.

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

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated October 16, 2006, acting on Department of Buildings Application No.402454465, reads in pertinent part:

"A1- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

b) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code."; and

WHEREAS, a public hearing was held on this application on January 9, 2007, after due notice by publication in the *City Record*, and then to closure and decision on this same date; and

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

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated October 16, 2006, acting on Department of Buildings Application No. 402454465, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 9, 2006" – 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);

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, January 9, 2007.

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**337-05-A**
APPLICANT – Adam W. Rothkrug, Esq., for Adragna Realty, LLC, owner.
SUBJECT – Application November 23, 2005 – An Appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R4 zoning district. Premises is located in a R4-A zoning district.
PREMISES AFFECTED – 1717 Hering Avenue, between Morris Park Avenue and Van Nest Avenue, Block 4115, Lot 23, Borough of The Bronx.
**COMMUNITY BOARD #11BX**
APPEARANCES –
For Applicant: Adam Rothkrug and Karen Ryan.
For Opposition: Michael R. Treanor, Pedro Toledo Jr. and Jenice Toledo.
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
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 February 23, 2007, at 10 A.M., for decision, hearing closed.

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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

**REGULAR MEETING**
**TUESDAY AFTERNOON, JANUARY 9, 2007**
**1:30 P.M.**

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

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**ZONING CALENDAR**

**175-05-BZ**
APPLICANT – Eric Palatnik, P.C. for 18-24 Luquer Street Realty LLC, owner.
SUBJECT – Application July 28, 2005 – Zoning variance pursuant to Z.R. §72-21 to allow the construction of a proposed four (4) story multi-family dwelling containing sixteen (16) dwelling units and eight (8) accessory parking spaces. Project site is located in an M1-1 zoning district and is contrary to Z.R. §42-00.
PREMISES AFFECTED – 18-24 Luquer Street, Between Hicks Street and Columbia Street, Block 520, Lot 13, 16, Borough of Brooklyn.
**COMMUNITY BOARD #6BK**
APPEARANCES –
For Applicant: Eric Palatnik.
**ACTION OF THE BOARD** – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson....4
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 28, 2005, acting on Department of Buildings Application No. 301973639, reads in pertinent part:

"Proposed residential development within M1-1 zoning district is contrary to Zoning Resolution Section 42-00."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a three-story and cellar residential building, which is contrary to ZR § 42-00; and

WHEREAS, the proposed building will have a total floor area of 14,025 sq. ft. (1.65 FAR), a street wall and total height of 34'-0", a rear yard of 30'-0", a front yard of 15'-0", 12 dwelling units, and 12 parking spaces (the "Proposed Building"); and

WHEREAS, the applicant initially proposed to construct a four-story building, with a setback, with 18,700 sq. ft. of floor area (2.2 FAR), a street wall and total height of 44'-0", 16 dwelling units, and eight parking spaces; and

WHEREAS, the Board expressed concern about this proposal, noting that the context in the immediate vicinity is small two and three-story single-family and multi-family buildings; and

WHEREAS, the Board suggested to the applicant that the initially-proposed height and bulk would not be compatible with the character of the community, given the heights of the surrounding buildings, and that the amount of FAR did not appear to be economically justified; and

WHEREAS, the Board directed the applicant to reduce the building's height and to provide an FAR which is permitted in an R5 zoning district; and

WHEREAS, the applicant responded to the Board's concerns by submitting revised plans, which reflect a reduced height and an FAR that complies with R5 zoning district regulations; and

WHEREAS, the Board finds the current version acceptable in terms of impact and compatibility with the surrounding context; and

WHEREAS, a public hearing was held on this application on August 8, 2006 after due notice by publication in

the *City Record*, with continued hearings on October 17, 2006 and November 21, 2006, and then to decision on January 9, 2007; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of the application on condition that the bricks be earth colored, air conditioner sleeves be provided for each apartment, and the building have a cornice; and

WHEREAS, the Southwest Brooklyn Industrial Development Corporation provided a letter in support of this application, noting the residential character of the block; and

WHEREAS, the subject premises includes two tax lots (lots 13 and 16), which have been historically used in conjunction with one another and are proposed to be merged; and

WHEREAS, the site is located on the south side of Luquer Street between Columbia Street and Hicks Street, has a width of 85'-0", a depth of 100'-0", and a lot area of 8,500 sq. ft.; and

WHEREAS, the site is currently occupied by two one-story garage structures, which are proposed to be demolished; and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, the instant variance applicant for use was filed; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is located in the midblock on a narrow street; (2) the adjacency of residential uses to the site; and (3) the site's soil is contaminated; and

WHEREAS, as to the location of the site in the midlbock along a functionally one-lane street, the applicant noted that although the street is mapped at 50 feet curb to curb, only 30 feet are paved, and there is parking on both sides of the street; and

WHEREAS, the applicant represents that the narrowness of the street constrains vehicle access to the site and truck loading for a conforming use; and

WHEREAS, in support of these representations, the applicant submitted a diagram depicting how a truck would be unable to access the site; and

WHEREAS, as to uniqueness, the applicant represents that there are no other vacant or substantially underutilized properties in the immediate vicinity on such a narrow street; and

WHEREAS, the applicant submitted a photograph of a DOT sign on the street which indicates that the street is closed to truck traffic, except for local deliveries; and

WHEREAS, additionally, the applicant asserts that the street is narrower than a number of the other streets in the subject M1-1 zoning district; and

WHEREAS, specifically, Coles Street only permits parking on one side of the street and, although West Ninth Street permits parking on both sides of the street, it is wider and allows for ample room to maneuver vehicles; and

WHEREAS, the Board agrees that the midblock location, the curb to curb width, and the parking on both sides of the street all constrain truck access to the site; and

WHEREAS, as to the adjacent uses, the applicant represents that there are residential uses on the west side of and across the street from the subject site; and

WHEREAS, the applicant asserts that the adjacent residential uses compromise access to the site and its marketability for a conforming use; and

WHEREAS, the applicant represents that of the 21 properties on the subject blockfront, 13 are occupied by residential uses; and

WHEREAS, the Board agrees that the long-standing adjacent residential uses compound the hardship associated with the site's midblock location on a narrow street; and

WHEREAS, as to the soil contamination, the applicant represents that semi-volatile and organic compounds and heavy metal contamination are present at the site; and

WHEREAS, the applicant represents that there may be significant additional costs associated with the remediation of the noted soil conditions, which would follow costly supplemental sampling and periodic inspections at the site; and

WHEREAS, the Board notes that because the applicant has not provided specific information regarding purported soil contamination and the potential costs associated with it, the Board cannot consider it as a hardship of the site; and

WHEREAS, the Board observes that the merger of the two lots results in a sufficient lot size that would normally be able to accommodate conforming uses; however, given the above-noted constraints, the applicant would not be able to achieve a reasonable return if the site was developed with a conforming building; and

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

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial building; and

WHEREAS, the applicant concluded that the conforming scenario would not realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use

or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including adjacent residential buildings, those across the street, and others on the subject block; and

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

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of 12 dwelling units and 12 accessory parking spaces will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, further, the Board notes that the earlier iterations would not have been contextual with the surrounding neighborhood, which is characterized by two and three-story residential buildings; and

WHEREAS, specifically, at hearing, the Board directed the applicant to reduce the building height and FAR so that it would be within the R5 zoning district parameters for a predominantly built-up block (1.65 FAR); and

WHEREAS, the Board notes that the proposal has been reduced in terms of FAR and height, which makes it much more compatible with the surrounding context; and

WHEREAS, additionally, the Board notes that the proposal includes one parking space for each dwelling unit, which will help minimize any impact on on-street parking; and

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

0WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed a four-story 18,700 sq. ft. (2.2 FAR) building with 16 dwelling units and eight parking spaces; and

WHEREAS, in response to the Board's concerns, the applicant proposed the current version of the building, which the Board finds acceptable; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 06BSA007K, dated July 28, 2005; and

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

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

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 2005 Environmental Assessment Statement and (2) a December 8, 2003 Phase I Environmental Site Assessment; and

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

WHEREAS, a Restrictive Declaration to address potential hazardous materials impacts was executed on December 15, 2006 and submitted for recordation on January 4, 2007; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, a three-story and cellar residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 5, 2007" – ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: three stories, 14,025 sq. ft. of floor area (1.65 FAR), a street wall and total height of 34'-0", a rear yard of 30'-0", a front yard of 15'-0", 12 dwelling units, and 12 parking spaces, all as indicated on the BSA-approved plans;

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

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, January 9, 2007.

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**290-05-BZ**

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application September 19, 2005 and updated April 19, 2006 – Variance pursuant to Z.R. §72-21 to permit a catering hall (Use Group 9) accessory to a synagogue and yeshiva (Use Groups 4 and 3). The site is located in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Stuart A. Klein.

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

THE VOTE TO GRANT –

Affirmative: …….....0

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

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342, reads in pertinent part:

"Proposed Catering Use (UG 9) is not permitted in an R5 Zone"; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R5 zoning district, the use of the cellar of a three-story building for a Use Group ("UG") 9 catering establishment, which is contrary to ZR § 22-00; and

WHEREAS, the appeal was brought on behalf of Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter "Applicant"), the owner of the building at the subject premises; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*; and

WHEREAS, a continued hearing was held on August 15, 2006, on which date the hearing was closed and decision was set for September 19, 2006; and

WHEREAS, at the request of Applicant, the decision date was deferred to September 26, 2006; and

WHEREAS, the Board reopened the hearing on this date, but Applicant's counsel was unable to attend; and

WHEREAS, decision was deferred to October 24, 2006; and

WHEREAS, the matter was again reopened on October 24, and a continued hearing date was set for November 21, 2006; and

WHEREAS, a continued hearing was held on November 21, and a decision was set for January 9, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

WHEREAS, the Board also notes that at the request of Applicant, the Board's counsel and staff met with Applicant during the hearing process to provide suggestions on how to approach the application; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application, on condition that the catering use at the premises close by 1 am and that Applicant consult with elected officials and the Community Board to address traffic concerns on the subject block; and

WHEREAS, certain neighbors appeared and made submissions in opposition to this application; and

WHEREAS, many members of the broader Viznitz community appeared in support of the application; and

WHEREAS, in addition, Applicant provided letters from other individuals supporting the application; and

WHEREAS, the Board notes that while Applicant claimed to have the support of certain elected officials, no elected official appeared at hearing and no letters of support from elected officials were submitted; and

WHEREAS, the subject premises is located in an R5 residential zoning district on 53rd Street between 18th and 19th Avenues and is currently improved upon with a three-story with cellar building (the "Building"); and

WHEREAS, the Building is across the street from and adjacent to numerous two-story semi-detached dwellings; and

WHEREAS, Certificate of Occupancy No. 300131122, issued for the Building on May 26, 1999 (the "CO"), lists the following uses: (i) UG 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

WHEREAS, this CO was the subject of a 2005 application by DOB, who sought to revoke or modify it pursuant to City Charter §§ 666.6(a) and 645(b)(3)(e), on the basis that the CO allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code; and

WHEREAS, DOB argued that the catering use did not possess lawful non-conforming UG 9 status and was therefore illegal; and

WHEREAS, specifically, DOB suggested that the prior UG 16 use on which the status of the UG 9 designation was predicated had been discontinued for more than two years and that the prior building housing this use had been demolished; DOB contended that this had not been revealed by the permit applicant; and

WHEREAS, under either circumstance, DOB alleged that there is no legal basis for a UG 9 catering establishment

designation on the CO for the cellar of the Building; and

WHEREAS, a public hearing was held on DOB's application on May 17, 2005, but before the next continued hearing, Applicant obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings on it; and

WHEREAS, this court order also directs Applicant to file a variance application at the Board; and

WHEREAS, months later, Applicant filed the instant variance application; and

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

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

WHEREAS, Applicant states that the Building currently contains a UG 3 religious school for approximately 625 boys (the "School"), a UG 4 synagogue space (the "Synagogue"), and a UG 9 catering establishment that serves the needs of the broader orthodox Jewish community in the vicinity of the site (the "Catering Establishment"); and

WHEREAS, the Synagogue is located on parts of the first and second floor mezzanine; and

WHEREAS, specifically, as illustrated on the plans for the first floor submitted by Applicant, stamped May 5, 2006, the first floor Synagogue space is for men, and adjoins a classroom with a removable partition; it is approximately 1,900 sq. ft.; and

WHEREAS, the second floor Synagogue space is for women, and is 1,380 sq. ft; and

WHEREAS, Applicant states that the Synagogue is attended by approximately 300 people on the Sabbath, and approximately 100 people and approximately 400 students on weekdays; and

WHEREAS, the remainder of the first and second floors, and the entirety of the third floor, appear to be occupied by the School's classrooms and other School-related spaces; and

WHEREAS, Applicant claims that the School serves many economically disadvantaged children, and that 85 percent of the children receive government-sponsored school lunch money; and

WHEREAS, both the School and Synagogue are permitted uses in the subject R5 zoning district; and

WHEREAS, the Catering Establishment, which is not a permitted use in the subject R5 zoning district, was listed on the CO on the alleged basis that it is a lawful non-conforming use, as discussed above; and

WHEREAS, the Catering Establishment is located in the cellar of the Building; the same cellar space is also apparently used for the School's cafeteria and assembly hall; and

WHEREAS, the Catering Establishment occupies approximately 18,000 sq. ft. of floor space in the cellar, with a primary event space, two adjoining lobbies and bathroom areas (one for men and one for women), as well as two kitchens; and

WHEREAS, the record indicates that the Catering Establishment has separate management and staff from the School and separate entrances with awnings reflecting the business name, that the food for events is made on the premises, that a guard is provided from 6 pm to 12 pm to assist with guest parking, and that waiters and busboys are hired on an "as needed" basis; and

WHEREAS, Applicant alleges that most events are held from approximately 6 pm to 12 am, and that 90 percent of the guests leave the Building at 11:30 pm; and

WHEREAS, Applicant states that ceremonies (held under Chuppahs, which look like canopies) related to the catered events are often conducted outside; and

WHEREAS, Applicant alleges that attendance at each event ranges between 340 and 400 people, though evidence submitted by Applicant indicates that some events are scheduled to have at least 500 guests; and

WHEREAS, Applicant provided information revealing that 166 events were held in 2004, and 154 events were held in 2005; and

WHEREAS, Applicant states that the catered events are offered at reduced rates relative to other catering establishments, with weddings costing approximately 25 dollars per plate; and

WHEREAS, members of the broader Viznitz community stated that the reduced rates were attractive to members of the larger orthodox and Hasidic Jewish community in Brooklyn; and

WHEREAS, these same members stated that the Catering Establishment serves the needs of this community; and

WHEREAS, the Catering Establishment has a license from the Department of Consumer Affairs for a catering establishment; and

WHEREAS, the Board notes that the Catering Establishment advertises in the Verizon Yellow Pages (both on-line and in print) under the listing "Banquet Facilities" as "Ohr Hachaim Ladies" and "Ohr Hachaim Men", with the address and phone number listed; and

WHEREAS, Applicant does not address the Verizon Yellow Pages advertisement, but in its last submission alleges that it does not pay for similar advertising that apparently runs in the Borough Park Community Yellow Pages, does not desire this advertising, and has informed the publisher of the Borough Park Community Yellow Pages to stop running the advertisements; and

WHEREAS, the applicant, in sum and substance, represents that the finding set forth at ZR § 72-21(a) may be satisfied in the case of a applicant that is a non-profit religious entity solely with evidence that that the requested waiver is necessary because of a programmatic need of the religious entity; and

WHEREAS, ZR § 72-21(a) requires that the Board find that the applicant has submitted substantial evidence of unique physical conditions related to the site that create practical

difficulties or unnecessary hardship in using the site in strict conformance with the applicable use regulation; and

WHEREAS, Applicant claims that the Catering Establishment satisfies a religious duty on the part of the broader Viznitz community and also provides a funding stream for the costs of operating the Synagogue and School that cannot be offset by tuition and donations alone; and

WHEREAS, Applicant claims that the Viznitz community totals about 6,500 members, but the Board notes that there is nothing in the record specifying where these 6,500 members reside; and

WHEREAS, moreover, the Board notes that there is nothing in the record to suggest that all 6,500 members of the Viznitz community cited by Applicant are regular members of the Synagogue or students or family members of students of the School; and

WHEREAS, in fact, the Board observes that the Synagogue attendance figures and School enrollment figures provided by Applicant would belie any such claim; and

WHEREAS, nevertheless, Applicant claims that there is a direct relationship based upon programmatic need between the School and the Synagogue and the Catering Establishment; and

WHEREAS, the Board recognizes that many variances it has granted in the past to religious or educational institutions have been predicated, in part, on the programmatic needs of the institution; and

WHEREAS, further, the Board does not question the sincerity of Applicant's belief that the provision of space for weddings, receptions, and other life events in general fulfills a religious need, nor the veracity of the contention that the revenue raised from the catering function is used in part for School and Synagogue purposes; and

WHEREAS, however, the Board does not consider either of the two alleged programmatic needs to be the equivalent of the type of programmatic need that can justify a use variance at this location; and

WHEREAS, first, as to the question of fulfillment of religious duty, while Applicant has claimed that in the Jewish faith there is a custom of incorporating wedding festivities as part of the marriage ritual, no explanation has been given as to how such a custom justifies the location of a UG 9 commercial catering establishment in a zoning district where it is not allowed; and

WHEREAS, the Board observes that Applicant has not made any credible claim that the lawful existence or operation of the School or the Synagogue depends on the existence of a UG 9 catering establishment within the Building; and

WHEREAS, the Board further observes that both the Synagogue and the School are as of right uses, and no claim is made that the Building's square footage is somehow incapable of accommodating the current congregation and enrollment absent the presence of the Catering Establishment; and

WHEREAS, the Board notes that Applicant has not claimed that the Synagogue is used during all catered events; and

WHEREAS, to the contrary, Applicant indicated during the hearing process that most of the celebrants prefer to have the ceremony outside in a Chuppah; and

WHEREAS, specifically, in its July 11, 2006 submission, Applicant notes that the usual schedule for a catered event features a Chuppah, which is held outdoors when possible; and

WHEREAS, further, Applicant has not provided any credible evidence that the School has any operational integration whatsoever with the Catering Establishment; and

WHEREAS, most importantly, the Board notes that it is not the School or Synagogue use that is generating the alleged programmatic need; rather, as conceded on multiple occasions by Applicant, the need appears to arise from general demand for low-cost catered events from the broader Hasidic and orthodox Jewish community in Brooklyn, regardless of any connection to the School or Synagogue; and

WHEREAS, a letter from another caterer, submitted to the Board by Applicant, confirms that the alleged programmatic need has nothing to do with the School or the Synagogue; this letter specifically states "[i]f the [Catering Establishment] would cease to function, it would cause much hardship to the Boro Park Community"; and

WHEREAS, the Board has never granted a variance based on such a broad-based need that is non-specific to the religious institution making the application and occupying the site; instead, the Board looks for a clear nexus between the requested variance and the specific programmatic needs of the institution on the site; and

WHEREAS, the Board observes that none of the cases cited by Applicant in its submission require the Board to grant the requested variance; and

WHEREAS, nor do any of the Board's prior decisions cited by Applicant in its initial submission; and

WHEREAS, three of these prior decisions were for bulk variances, needed by congregations in order to create a building with sufficient square footage to accommodate increased attendance; none of them were commercial use variances for a catering establishment; and

WHEREAS, the record also contains mention of two other occasions on which the Board has considered an application for a commercial catering variance: (1) BSA Cal. No. 194-03-BZ, concerning 739 East New York Avenue, Brooklyn, decided on December 14, 2004; and (2) BSA Cal. No. 136-96-BZ, concerning 129 Elmwood Avenue, Brooklyn, decided on June 3, 1997; and

WHEREAS, first, the Board notes that generally prior variances are not viewed as precedent for future applications; and

WHEREAS, instead, because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the

part of the Board; and

WHEREAS, second, even assuming that past grants do function as binding precedent, the Board finds that both of these matters are distinguishable from the instant matter, and support the Board's rejection of it; and

WHEREAS, in the East New York Avenue matter, the applicant, a religious school, originally attempted to argue that the variance could be predicated on the alleged programmatic need of creation of a revenue stream for the school; and

WHEREAS, however, the Board rejected this argument, and instructed the applicant to approach the case as if it were a for-profit applicant, since the proposed use was UG 9 commercial catering that would serve the larger community; and

WHEREAS, thus, the applicant was required to establish that the site presented a unique physical condition and to submit a feasibility study in order to establish hardship; and

WHEREAS, as reflected in the resolution for that matter, the applicant was able to meet these requirements and the variance was granted; and

WHEREAS, as conceded by Applicant at the August 15, 2006 hearing, there is no such uniqueness present at the subject site or as to the Building; and

WHEREAS, accordingly, Applicant did not even attempt to make a similar argument in this proceeding, but instead attempted to argue the application based solely on programmatic needs; and

WHEREAS, in the Elmwood Avenue matter, the applicant, another religious school, applied to the Board for multiple bulk waivers related to the proposed construction of a religious school on a site split by M1-1, R3-1 and R5 zoning district boundaries; and

WHEREAS, the applicant applied for a use variance for the school in the M1-1 zoning district, and also for various height, setback and rear yard requirements; and

WHEREAS, as initially argued by the applicant, the site suffered a hardship due to irregular shape, substandard depth, grade condition and adjacency to a railroad cut; and

WHEREAS, a catering hall was also proposed, though initially the applicant did not request a use variance for it; and

WHEREAS, instead, the catering hall was proposed to be located entirely within the M-1 zoning district, on an as of right basis; and

WHEREAS, however, during the course of the hearing process, the applicant revealed that the kitchen for the catering facility (which was also the kitchen for the school) was partially within the residential zone; and

WHEREAS, accordingly, a use variance for this small portion of the catering facility was required; and

WHEREAS, the Board asked that the applicant attempt to isolate the catering use to the M1-1 zoning district through the erection of a wall in the cellar; and

WHEREAS, the applicant explained that the site was split by a district boundary, and it was this unique physical condition that caused the need for the small use waiver for the catering establishment; and

WHEREAS, the Board observes that it was only the presence of the district boundary line that caused the need for a minor use variance for the kitchen; and

WHEREAS, the resolution for this matter also cites to the irregular shape and narrow depth of the site as the cause of the practical difficulties and unnecessary hardship; and

WHEREAS, as noted above, the subject site suffers no unique physical hardship, a fact conceded by Applicant; and

WHEREAS, in sum, neither of the two prior commercial catering variance applications require the Board to grant the requested variance here, since they were predicated on the site's actual physical uniqueness; and

WHEREAS, in addition to the guidance that these two cases provide, the Board notes that when it grants applications from religious and educational institutions for variances based upon programmatic need, it routinely places conditions in said grants to prohibit commercial catering within the schools or places of worship; and

WHEREAS, the applicants in such cases accept this condition without question, and agree to make only accessory use of the spaces within the buildings; rarely if ever do applicants argue, as has Applicant here, that unrestricted UG 9 commercial catering is a programmatic need; and

WHEREAS, the second claimed programmatic need is that income from the Catering Establishment is purportedly used to support the School and Synagogue and that the School and Synagogue would close without this income; and

WHEREAS, the Board again disagrees that this is the type of programmatic need that can be properly considered sufficient justification for the requested use variance; and

WHEREAS, while the Board recognizes that the Applicant believes that the School and Synagogue are important to the broader Jewish community in Brooklyn, it is not required on this basis to grant a use variance for a commercial use on the same site as the School and Synagogue; and

WHEREAS, were it to adopt Applicant's position and accept income-generation as a legitimate programmatic need sufficient to sustain a variance, then any religious institution could ask the Board for a commercial use variance in order to fund its schools, worship spaces, or other legitimate accessory uses; and

WHEREAS, again, none of the case law or prior Board determinations cited by Applicant stand for this proposition; and

WHEREAS, the Board observes, in fact, that the East New York Avenue case is a repudiation of Applicant's unfounded contention; and

WHEREAS, further, the Board observes that such a theory, if accepted, would subvert the intent of the ZR's distinction between community facility uses, which are allowed in residential districts, from commercial uses, which

are not; and

WHEREAS, the Board notes that UG 9 catering establishments are only permitted in commercial zoning districts, and, pursuant to ZR § 32-18, is the type of commercial use that provides "primarily . . . business and other services that (1) serve a large area and are, therefore, appropriate in secondary, major or central commercial shopping areas, and (2) are also appropriate in local service districts, since these are typically located on the periphery of major secondary centers"; and

WHEREAS, the Board further observes that the goals of the commercial regulations in the ZR include the protection of nearby residences against congestion that can result from commercial uses; and

WHEREAS, Appellant has offered no justification for its blanket assertion that a primary commercial use should be permitted in a residential district anytime a religious institution desires to generate revenue by engaging in commercial activity; and

WHEREAS, based on the above, the Board finds that Applicant has failed to establish that it has a programmatic need that requires the requested variance; and

WHEREAS, in a later submission, Applicant also argued that it was entitled to the proposed use variance based upon its good faith reliance on the DOB-issued permit that precipitated the issuance of the CO; and

WHEREAS, Applicant claims that it spent "millions" of dollars constructing the Building and then "hundreds of thousands" more subsequent to the issuance of the CO; and

WHEREAS, the record is devoid of any evidence of these expenditures or the precise amount, but even if such had been established, the Board notes that the Building includes the School and the Synagogue, as well as a cellar that can lawfully be used as the School's cafeteria and for other accessory uses; and

WHEREAS, thus, all such expenditures would not be wasted; and

WHEREAS, additionally, since Applicant has had the benefit of the Catering Establishment since the CO was issued, consideration of the cumulative financial gain over the last seven years would be a relevant consideration; Applicant did not engage in this analysis however; and

WHEREAS, even had expenditures been proven and discussed in any comprehensible manner by Applicant, the Board observes that the good faith reliance doctrine is not a categorical substitute for uniqueness or hardship; and

WHEREAS, rather, expenditure made in good faith reliance upon a permit is merely one of the factors that may be considered by the Board, and physical uniqueness is still relevant; and

WHEREAS, as noted above, Applicant concedes that the site and the Building present no unique physical features; instead, the site is regular in size and shape, and the Building is recently constructed and not obsolete as a school or synagogue building; and

WHEREAS, again, the site itself does not present any hardship; and

WHEREAS, additionally, Applicant made no attempt to establish that the purported reliance was made in good faith; and

WHEREAS, the Board notes that it is Applicant's responsibility to convince the Board that the permit and CO were obtained with all relevant facts being disclosed to DOB by the owner of the premises and the filing professional who obtains the permit; and

WHEREAS, here, the record contains no evidence that this responsibility was met; and

WHEREAS, in sum, the Board notes that Applicant failed to present any evidence as to alleged good faith reliance that would allow it to fully determine this claim, notwithstanding the fact that the Board stood ready to consider such evidence; and

WHEREAS, finally, Applicant suggests that the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), a federal law, requires that the Board issue the requested variance; and

WHEREAS, RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, first, the Board observes that whether the Board grants the variance or not, the School and the Synagogue are permitted uses under the R5 zoning district regulations and may remain legally on the site; and

WHEREAS, further, as expressed in the resolution for the companion appeal, Applicant is free to hold, and charge money for, events in the cellar to the extent that they are accessory to the School or Synagogue; and

WHEREAS, there is no evidence that would support the conclusion that the Board, in denying this variance application, is imposing a substantial burden on or even interfering with the exercise of religious freedom or religious practices of the School or the Synagogue; and

WHEREAS, Applicant's contention that the School and the Synagogue would not be able to cover expenses without the on-site Catering Establishment, even if proved to be a fact, does not lead to a contrary conclusion; and

WHEREAS, additionally, it is difficult for the Board to understand why RLUIPA should function to support the granting of a commercial use variance in order to support a revenue stream for a religious entity that is unable to support its non-commercial uses through traditional means; and

WHEREAS, accordingly, the Board declines to apply RLUIPA in the novel way that Applicant suggests; and

WHEREAS, further, the Board notes that the court in Episcopal Student Foundation vs. City of Ann Arbor, 341 FSupp2d 691 (ED Michigan 2004) held that that zoning

regulations that imposed financial burdens on a church do not constitute substantial burdens under RLUIPA; and

WHEREAS, thus, even if the Catering Establishment is required to be relocated at a cost, or if the activities conducted there are limited to events that are accessory, with a resulting decrease in revenue, this is not a substantial burden under RLUIPA; and

WHEREAS, in addition, the Episcopal Student Foundation court held that a zoning ordinance does not infringe on the free exercise of religion where religious activity can occur elsewhere in the municipality; and

WHEREAS, thus, even if the operation of the Catering Establishment can properly be characterized as religious in nature (despite its status under the ZR as a commercial use), since it is allowed in commercial zoning districts that are mapped liberally throughout the City, Applicant's alleged free exercise rights are not compromised; and

WHEREAS, in sum, the Board finds that all of Applicant's arguments as to why the finding set forth at ZR § 72-21(a) is met or why the request for the variance is otherwise justified are without merit; and

WHEREAS, because Applicant has failed to provide substantial evidence in support of this finding or persuade the Board as to why the finding should be overlooked, consideration of the remaining findings is unnecessary; and

WHEREAS, however, merely because this application was fundamentally flawed and poorly presented does not mean that the Board is blind to the concerns of Applicant; and

WHEREAS, the Board again observes that Applicant can use the cellar legally for accessory purposes; and

WHEREAS, further, if Applicant determines that it must engage in commercial catering activities, there is no reason why these activities may not occur on a site that is commercially zoned; the income that is generated can still be used to support the School and Synagogue; and

WHEREAS, the Board finds that these alternative measures will enable Applicant to pursue its proposed catering use in full compliance with the law without incurring excessive additional costs.

*Therefore it is Resolved* that the decision of the decision of the Brooklyn Borough Commissioner, dated February 28, 2006, acting on Department of Buildings Application No. 301984342 is upheld and this variance application is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**60-06-A**

APPLICANT – Stuart A. Klein, for Yeshiva Imrei Chaim Viznitz, owner.

SUBJECT – Application April 5, 2006 – Request pursuant to Section 666 of the New York City Charter for a reversal of DOB's denial of a reconsideration request to allow a catering use as an accessory use to a synagogue and yeshiva in an R5 zoning district.

PREMISES AFFECTED – 1824 53rd Street, south side, 127.95' east of the intersection of 53rd and 18th Avenue, Block 5480, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Stuart A. Klein.

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

THE VOTE TO GRANT –

Affirmative: .....0

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

THE RESOLUTION1:

WHEREAS, this is an appeal of a Department of Buildings final determination dated March 31, 2006, issued by the Brooklyn Borough Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part: "Proposed Catering Use (UG 9) is not an Accessory use to the Synagogue and School (UG 4 & 3) in an R5 zone"; and

WHEREAS, the appeal was brought on behalf of Yeshiva Imrei Chaim Viznitz, a not for profit religious institution (hereinafter "Appellant"), the owner of the building at the subject premises; and

WHEREAS, a public hearing was held on this application on June 13, 2006 after due notice by publication in *The City Record*; and

WHEREAS, a continued hearing was held on August 15, 2006, on which date the hearing was closed and decision was set for September 19, 2006; and

WHEREAS, at the request of Appellant, the decision date was deferred to September 26, 2006; and

WHEREAS, the Board reopened the hearing on this date, but Appellant's counsel was unable to attend; and

WHEREAS, decision was deferred to October 24, 2006; and

WHEREAS, the matter was again reopened on October 24, and a continued hearing date was set for November 21, 2006; and

WHEREAS, a continued hearing was held on November 21, and a decision was set for January 9, 2007; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal, as did certain neighbors; and

WHEREAS, many members of the Viznitz community appeared in support of the appeal; and

WHEREAS, in addition, Appellant provided letters from other individuals supporting the appeal; and

WHEREAS, the Board notes that while Appellant claimed to have the support of certain elected officials, no elected official appeared at hearing and no letters of support from elected officials were submitted; and

THE PREMISES AND BUILDING

WHEREAS, the subject premises is located in an R5 residence zoning district on 53rd Street between 18th and 19th

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1 Headings are utilized only in the interest of clarity and organization.

Avenues and is currently improved upon with a three-story with cellar building (the "Building"); and

WHEREAS, the Building is across the street from and adjacent to numerous two-story semi-attached dwellings; and

WHEREAS, Certificate of Occupancy No. 300131122, issued for the Building on May 26, 1999 (the "CO"), lists the following uses: (i) Use Group ("UG") 4 assembly hall and kitchen and UG 9 catering use in the cellar; (ii) UG 4 synagogue and UG 3 classrooms on the first and second floors; and (iii) UG 3 classrooms on the third floor; and

THE APPLICATION TO REVOKE THE CERTIFICATE OF OCCUPANCY

WHEREAS, this CO was the subject of a 2005 application by DOB, who sought to revoke or modify it pursuant to City Charter §§ 666.6(a) and 645(b)(3)(e), on the basis that the CO allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code; and

WHEREAS, DOB argued that the catering use did not possess lawful non-conforming UG 9 status and was therefore illegal; and

WHEREAS, specifically, DOB suggested that the prior UG 16 use on which the status of the UG 9 designation was predicated had been discontinued for more than two years and that the prior building housing this use had been demolished; DOB contended that this had not been revealed by the permit Appellant; and

WHEREAS, under either circumstance, DOB alleged that there is no legal basis for a UG 9 catering use designation on the CO for the cellar of the Building; and

WHEREAS, a public hearing was held on DOB's application on May 17, 2005, but before the next continued hearing, Appellant obtained a court order, dated July 8, 2005, enjoining the Board from acting on the application and from conducting further proceedings on it; and

WHEREAS, this court order also directs Appellant to file a variance application at the Board; and

WHEREAS, months later, Appellant filed the variance application under BSA Cal. No. 290-05-BZ; and

WHEREAS, Appellant also filed the instant appeal; and

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

THE SUBJECT BUILDING

WHEREAS, Appellant states that the Building currently contains a UG 3 religious school for approximately 625 boys (the "School"), a UG 4 synagogue space (the "Synagogue"), and a UG 9 catering establishment that serves the needs of the orthodox Jewish community in the vicinity of the site (the "Catering Establishment"); and

WHEREAS, the Synagogue is located on parts of the first and second floors; and

WHEREAS, specifically, as illustrated on the plans for the first floor submitted by Appellant, stamped May 5, 2006, the first floor Synagogue space is for men, and adjoins a classroom with a removable partition; it is approximately 1,900 sq. ft.; and

WHEREAS, the second floor Synagogue space is for women, and is 1,380 sq. ft; and

WHEREAS, Appellant states that the Synagogue is attended by approximately 300 people on the Sabbath, and approximately 100 people and approximately 400 students on weekdays; and

WHEREAS, the remainder of the first and second floors, and the entirety of the third floor, appear to be occupied by classrooms and other School-related spaces; and

WHEREAS, Appellant claims that the School serves many economically disadvantaged children, and that 85 percent of the children receive government-sponsored school lunch money; and

WHEREAS, both the School and Synagogue are permitted uses in the subject R5 zoning district; and

THE CATERING ESTABLISHMENT

WHEREAS, the Catering Establishment, which is not a permitted use in the subject R5 zoning district, was listed on the CO on the alleged basis that it is a lawful non-conforming use, as discussed above; and

WHEREAS, the Catering Establishment is located in the cellar of the Building; the same cellar space is also apparently used for the School's cafeteria and assembly hall; and

WHEREAS, the Catering Establishment occupies approximately 18,000 sq. ft. of floor space in the cellar, with a primary event space, two adjoining lobbies and bathroom areas (one for men and one for women), as well as two kitchens; and

WHEREAS, the record indicates that the Catering Establishment has separate management and staff from the School and separate entrances with awnings reflecting the business name, that the food for events is made on the premises, that a guard is provided from 6 pm to 12 pm to assist with guest parking, and that waiters and busboys are hired on an "as needed" basis; and

WHEREAS, Appellant alleges that most events are held from approximately 6 pm to 12 am, and that 90 percent of the guests leave the Building at 11:30 pm; and

WHEREAS, Appellant states that ceremonies (held under Chuppahs, which look like canopies) related to the catered events are often conducted outside; and

WHEREAS, Appellant alleges that attendance at each event ranges between 340 and 400 people, though evidence submitted by Appellant indicates that some events are scheduled to have at least 500 guests; and

WHEREAS, Appellant provided information revealing that 166 events were held in 2004, and 154 events were held in 2005; and

WHEREAS, Appellant states that the catered events are offered at reduced rates relative to other catering establishments, with weddings costing approximately 25 dollars per plate; and

WHEREAS, members of the broader Viznitz community stated that the reduced rates were attractive to members of the

larger orthodox and Hasidic Jewish community in Brooklyn; and

WHEREAS, these same members stated that the Catering Establishment serves the needs of this community; and

WHEREAS, the Catering Establishment has a license from the Department of Consumer Affairs for a catering establishment; and

WHEREAS, the Board notes that the Catering Establishment advertises in the Verizon Yellow Pages (both on-line and in print) under the listing "Banquet Facilities" as "Ohr Hachaim Ladies" and "Ohr Hachaim Men", with the address and phone number listed; and

WHEREAS, Appellant does not address the Verizon Yellow Pages advertisement, but in its last submission alleges that it does not pay for similar advertising that apparently runs in the Borough Park Community Yellow Pages, does not desire this advertising, and has asked the publisher of the Borough Park Community Yellow Pages to stop running the advertisements; and

THE ACCESSORY USE ISSUE

WHEREAS, this appeal requires the Board to consider whether the Catering Establishment – a use historically and currently operated pursuant to a primary commercial UG 9 designation on the CO (albeit a potentially unlawful one) – can nevertheless properly be characterized as a UG 3 school or UG 4 synagogue accessory use; and

WHEREAS, ZR § 12-10 "Accessory use" reads "An 'accessory use': (a) is a use conducted on the same zoning lot as the principal use to which it is related (whether located within the same or an accessory building or other structure, or as an accessory use of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, accessory docks, off-street parking or off-street loading need not be located on the same zoning lot; and (b) is a use which is clearly incidental to, and customarily found in connection with, such principal use; and (c) is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees."; and

WHEREAS, there is no disagreement that the Catering Establishment is located on the same zoning lot as the School and Synagogue; and

WHEREAS, further, Appellant alleges that it owns all three uses; and

WHEREAS, thus, the primary issues in this appeal that require resolution are: (1) whether the catering establishment is clearly incidental to the School or Synagogue; and (2) whether such an establishment is customarily found in connection with religious schools or synagogues; and

WHEREAS, for the reasons set forth below, the Board disagrees that the Catering Establishment is an accessory use to either the School or the Synagogue; and

WHEREAS, moreover, all of Appellant's arguments to the contrary, whether based on case law, DOB policy, or past Board decisions, are without merit; and

FACTORS IN DETERMINING ACCESSORY USE

WHEREAS, as a threshold matter, the Board notes that a determination of whether a particular use is accessory to another use requires a review of the specific facts of each situation; and

WHEREAS, as held by the Court of Appeals in New York Botanical Garden v. Board of Standards and Appeals, 91 N.Y.2d 413 (1998), "[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question . . [t]his analysis is, to a great extent, fact-based . . ."; and

WHEREAS, thus, the Board finds that Appellant's argument that information relating to the operation of the Catering Establishment has no bearing on whether it is an accessory use, as expressed at the first hearing, is contrary to law; and

WHEREAS, DOB, which must review questions of accessory use in the first instance, cites to various factors that it evaluates when it is determining whether a particular use is accessory to another use; and

WHEREAS, when the proposed accessory use is catering, DOB states that it looks to the intensity of the use and its impact, the frequency of the catered events, the hours of operation, parking availability, the management of the food operations, whether food prepared there was delivered off-site, whether events were confined to the interior catering space or also occurred outside, and whether the use was advertised as a catering hall or banquet facility; and

WHEREAS, DOB also examines the relationship between the size of the membership of the religious entity and the size of events; and

WHEREAS, the Board concurs that these are reasonable factors to examine; and

WHEREAS, however, it notes that the list should not be considered exhaustive; and

WHEREAS, the Board also notes that given the factually-driven nature of any accessory use inquiry, certain factors may be more pertinent depending on the types of uses in question and that other factors not mentioned might be pertinent if the uses are different; and

WHEREAS, as discussed at the first hearing, the Board considered the following items to be among the relevant considerations and asked for information as to each of them: (1) whether the Catering Establishment has separate entrances and lobbies from the School and Synagogue; (2) the hours of operation; (3) whether the Catering Establishment has separate garbage pick-up from the other uses; (4) the frequency of outdoor activities related to catered events; (5) the relationship of the events to Synagogue members or School students/staff/family members; and (6) traffic and parking impacts; and

DOB'S POSITION AS TO THE CATERING ESTABLISHMENT

WHEREAS, as noted above, DOB takes the position that Appellant has not established that the catering

establishment is incidental to either the School or the Synagogue or that such an establishment is customarily found with such uses; and

WHEREAS, based upon its review of the record, the Board agrees with DOB, for the reasons set forth below; and

WHEREAS, as to the question of whether the catering is incidental, the Board notes at the outset that the Catering Establishment appears to have a more significant relationship with the broader Jewish community as opposed to the Synagogue or the School; and

WHEREAS, as discussed above, Appellant concedes that the catering establishment serves the broader community, and that at least 50 percent of all events are not related to the Synagogue or School; and

WHEREAS, the Board notes that Appellant has submitted no evidence that 50 percent of the catered events relate to the Synagogue or the School, even though Appellant committed to do doing so; and

WHEREAS, however, even assuming that this is true, it is clear that a substantial amount of the establishment's operation is entirely unrelated to either the School or the Synagogue; and

WHEREAS, further, the Board disagrees that merely because a student of the School is having a bar mitzvah or a member of the Synagogue is getting married and uses the Catering Establishment automatically renders the use of the Catering Establishment for such purposes accessory in all instances, given the other factors that must be weighed; and

WHEREAS, second, the Board notes that Appellant has not suggested to the Board that the Synagogue is used during all catered events; and

WHEREAS, to the contrary, Appellant has indicated on more than one occasion that most of the celebrants prefer to have the ceremony outside in a Chuppah; and

WHEREAS, specifically, in its July 11, 2006 submission, Appellant notes that the usual schedule for a catered event features a Chuppah, which is held outdoors when possible; and

WHEREAS, third, Appellant has not provided any credible evidence that the School has any integration whatsoever with the Catering Establishment; and

WHEREAS, the Catering Establishments has separate entrances, its own accessory rooms, hours of operation that do not relate correspond to the School, and its own set of parking and traffic impacts; and

WHEREAS, additionally, the fact that income generated by the Catering Establishment is used to support the operation of the School does not make the Catering Establishment incidental to the School; and

WHEREAS, the Catering Establishment can still be a primary use under such circumstances; and

WHEREAS, Appellant has not provided any precedent that establishes that a use is accessory to another merely based on the direction of the income stream; and

WHEREAS, even assuming *arguendo* that the direction of income flow is an important consideration as to whether a use is incidental, it is far from clear that the Catering Establishment exclusively serves the School in this respect; and

WHEREAS, one could just as easily argue that it is the School's ability to obtain federal school lunch money that enables the Catering Establishment to offer reduced rates for its services and that it is the School, therefore, that subsidizes the Catering Establishment; and

WHEREAS, in sum, any argument based on income generation is unavailing; and

WHEREAS, fourth, the Board observes that the UG 9 designation for the Catering Establishment set forth on the CO was specifically sought by Appellant based on the alleged lawful non-conforming status and because of the proposed commercial operation of the establishment, an operation contemplated by Appellant to be primary rather than accessory; and

WHEREAS, presumably, absent the DOB application to modify the CO, Appellant would prefer to maintain this UG 9 designation, since the constraints of a UG 3 or UG 4 accessory designation would not exist; and

WHEREAS, Appellant has failed to explain why a UG 9 designation for the Catering Establishment was sought in 1999 if the use was actually operating as an accessory use to the Synagogue; and

WHEREAS, finally, the Board observes that the ZR does not anticipate that primary uses can normally qualify as accessory uses; and

WHEREAS, the Board notes that ZR § 12-10 "Accessory use" provides a list of examples of accessory uses; such uses include servants' quarters, caretaker apartments, the keeping of pets, swimming pools for guests of facilities, domestic or agricultural storage in barns, home occupations, a newsstand within a building, incinerators, storage of goods for commercial or manufacturing purposes, incidental repairs, the removal for sale of sod, clay, etc. for construction purposes, off-street parking and off-street loading berths related to the use of the site, signage, radio towers, railroad switching facilities, small sewage disposal facilities, or ambulance outposts connected with a fire or police station; and

WHEREAS, while certain of these uses (storage, for instance) could be primary uses, it is clear that the majority of them are ancillary uses that support the site's primary use (though they might not be necessary for the primary use to exist); and

WHEREAS, as established above, the record does not support a finding that the Catering Establishment is secondary to the School or Synagogue or supports in any direct manner the day to day function of these uses in a tangible manner comparable to the uses listed in ZR § 12-10; and

WHEREAS, accordingly, the Board concludes that Appellant has failed to provide evidence in support of its contention that the catering establishment is incidental to either the Synagogue or the School; and

WHEREAS, as to the "customarily found" issue, DOB notes that a catering establishment that has heretofore

operated as a primary UG 9 catering establishment is not customarily found in connection with either religious schools or synagogues; and

WHEREAS, again, the Board agrees with DOB; and

WHEREAS, the Board acknowledges that churches, synagogues, schools, and other institutions on occasion use space within their buildings for events on an accessory basis; and

WHEREAS, however, the Board notes that a distinction must be made between an 18,000 sq. ft. catering establishment that operates on multiple consecutive days as opposed to the occasional use of a facility's space for events; and

WHEREAS, the Board observes that this distinction is made in the ZR, which carefully separates UG 3 and UG 4 accessory uses, lawful in residential districts, from UG 9 catering establishments, commercial in nature and lawful only in commercial districts; and

WHEREAS, Appellant cites to other non-profit institutions that use space in their facilities for the contention that DOB has allowed UG 9 catering establishments to be accessory uses in other instances; and

WHEREAS, the underlying but unfounded assumption is that catered events at such institutions occur at the same frequency and intensity as at the Catering Establishment; and

WHEREAS, however, Appellant has not produced any evidence that convinces this Board that establishments comparable to the Catering Establishment are customarily found in connection with such institutions; and

WHEREAS, in particular, Appellant has offered no proof that any of the cited institutions are offering services that approximate, in frequency and intensity, the catering establishment in question; and

WHEREAS, in fact, the materials (as well as Appellant's scant discussion of them) fail to establish how many events such facilities host, who attends, the type of event, or the hours of operation; and

WHEREAS, Appellant, in a July 26, 2006 submission, provides a list of community facilities alleged to provide commercial catering, and divides this list between six "religious institutions" and five museums, gardens or institutes; and

WHEREAS, the first religious institution is the 92nd Street "Y"; while this institution advertises the availability of its spaces on its web-site, it is not clear if the frequency of events or their intensity in terms of the amount of guests rises to the level of a primary commercial occupancy, as does the Catering Establishment; and

WHEREAS, further, this facility, which combines many different uses, including lecture hall, school, performance space and health center, to name a few, is a distinct use from a religious school and synagogue, given the very different nature of operations and mission; and

WHEREAS, thus, this example does not support the conclusion that a UG 9 catering establishment is customarily found in connection with a synagogue or religious school; and

WHEREAS, Appellant then cites to Saint Bartholomew's Church; and

WHEREAS, the Board notes that this church is within a commercial zoning district where any commercial catering use would be permitted as of right; to the extent that such is offered at the church, it would be a legal primary use; and

WHEREAS, again, Appellant also fails to provide any information as to the frequency or intensity of the events held at this church; and

WHEREAS, Appellant then cites to Earl Hall of Columbia University, which like many churches makes its space available for rent for weddings and other events; and

WHEREAS, however, no evidence is provided in support of the contention that Columbia engages in catering, or as to the frequency or intensity of events; and

WHEREAS, Appellant next cites to the West Side Jewish Center, but only submits a web-site print-out describing a single mid-Summer Bar B-Q; and

WHEREAS, such evidence hardly supports the conclusion that the center is running a catering establishment; and

WHEREAS, further, as with Saint Bartholomew's Church, the center is located within a commercial zoning district where a UG 9 catering establishment would be allowed on a primary basis; and

WHEREAS, Appellant next cites to Congregation Ohab Zedek, and submits a web-site print-out describing the daily scheduled activities for a particular day; and

WHEREAS, nothing on this print-out indicates that the congregation is operating a catering establishment; and

WHEREAS, Appellant then cites to Landmark on the Park, a Universalist Church facility; and

WHEREAS, a print-out from the web-site indicates that this facility rents out its space for events; however, once again this does not mean it is running a catering establishment or that the frequency or intensity of events is comparable to the Catering Establishment; and

WHEREAS, Appellant cites next to Congregation Adereth El; and

WHEREAS, one of the many pages of web-site print-outs that Appellant submits indicates that this congregation recently added an in-house caterer; and

WHEREAS, the recent addition of the in-house caterer to this facility does not lead to the conclusion that such a use is customarily found with houses of worship; and

WHEREAS, further, Appellant once again fails to provide any information about the frequency and intensity of any catering events at this facility; and

WHEREAS, as noted above, Appellant also cites to five non-religious institutions: the City's Fire Museum, the Seaman's Institute, the American Museum of Natural History, the New York Botanical Garden, and the Museum of the City of New York; and

WHEREAS, Appellant submits web-site print-outs for the first three that indicates that they rent out space for events; and

WHEREAS, the Board observes that none of these

institutions are houses of worship or religious schools; thus, whether they house a commercial catering establishment is not relevant; and

WHEREAS, further, the Fire Museum and the Seaman's Institute are in either commercial or manufacturing zoning districts, where catering is allowed; and

WHEREAS, finally, once again, Appellant fails to establish whether such facilities host events in manner comparable to what occurs at the Catering Establishment; and

WHEREAS, Appellant also cites to two other houses of worship; and

WHEREAS, first, at the initial hearing, Appellant mentioned the Temple Emmanuel at 4902 14th Avenue, Brooklyn, and claimed that the certificate of occupancy for this facility indicates that it has a catering hall; and

WHEREAS, the most recent certificate of occupancy for this facility indicates that it has a social hall and kitchen; and

WHEREAS, however, like the other facilities cited by Appellant, this does not mean that Temple Emmanuel is operating a catering establishment similar to the one at issue here; and

WHEREAS, second, Appellant cites to the Riverside Church, which, according to web-site print-outs, provides on-site catering; and

WHEREAS, as has already been stated repeatedly, Appellant failed to provide the Board with any evidence that the catering here rises to the level of a commercial catering establishment in terms of frequency and intensity and other relevant factors; and

WHEREAS, in sum, Appellant has cited to only a few houses of worship that provide on-site catering services in a district where a UG 9 catering establishment would not be permitted, and has failed to provide any evidence that such commercial catering occurs in these houses of worship; and

WHEREAS, the Board is personally aware that there are hundreds of houses of worship in the City, and many, many more in the State; and

WHEREAS, citation to only a few potentially comparable facilities to the Catering Establishment does not allow the Board to conclude that a catering facility operating at the intensity and frequency that the Catering Establishment does is a use customarily found in connection with houses of worship; and

WHEREAS, further, Appellant has not provided a single example of a religious school that has a comparable facility as an accessory use; and

WHEREAS, most importantly, the Board observes that all of the facilities mentioned by Appellant are not before this Board; and

WHEREAS, to the extent that any of the other institutions operate UG 9 catering establishments illegally, in violation of their certificates of occupancy or zoning, this would support enforcement action by DOB, rather than a determination that such an operation is always fundamentally accessory; and

WHEREAS, accordingly, the Board concludes that Appellant has failed to provide evidence in support of its contention that catering establishments like the one in question here are customarily found in connection with schools or houses of worship; and

WHEREAS, that being said, the Board acknowledges that houses of worship often rent out their space for events; and

WHEREAS, however, the occasional use of such spaces for outside events should not be, in terms of frequency and intensity, the equivalent of the operation of a primary UG 9 commercial catering establishment; and

WHEREAS, while there admittedly may be some borderline cases where it is difficult to ascertain whether a particular house of worship is engaging in a primary commercial enterprise as opposed to the occasional accessory renting of space, such is not the case here: as noted above, the Catering Establishment is a primary use, the type of which is neither incidental to houses of worship or religious schools nor customarily found with such institutions; and

APPELLANT'S CITATION TO CASE LAW

WHEREAS, as noted above, Appellant cites to a variety of cases for the proposition that the UG 9 catering establishment may be considered an accessory use; and

WHEREAS, as a threshold matter, the Board finds that no prior determination as to what may or may not be an accessory use given a particular fact pattern will ever be prefect precedent as to a different set of facts; and

WHEREAS, however, the Board has reviewed all of these cases and finds that none of them dictate the outcome that Appellant desires; and

WHEREAS, many of the cases do nothing more than establish that generally municipalities must provide some deference in the implementation and enforcement of zoning schemes for religious and educational uses (*see generally* Cornell v. Bagniardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board notes that the City's zoning scheme already allows both the School and the Synagogue to be located within the subject R5 district as of right; and

WHEREAS, further, Appellant can use the cellar space for religious events so long as the use of the space is accessory to the School and/or Synagogue; and

WHEREAS, thus, the required deference is already reflected in the existing text; and

WHEREAS, in sum, the Board does not dispute that religious and educational institutions are permitted to engage in social, recreational or athletic activities that are reasonably associated with the religious or education purposes; and

WHEREAS, nevertheless, nothing in the line of cases cited by Appellant requires the Board to rewrite the ZR § 12-10 definition of "accessory use" to include catering establishments that would otherwise qualify as UG 9 commercial uses based upon actual operation; and

WHEREAS, Appellant also cites to cases that address specific accessory uses in relation to either educational or

religious uses, and attempts to analogize the facts in those cases to those present in this appeal; and

WHEREAS, specifically, Appellant cites to these cases in support of the proposition that courts are liberal when assessing whether a particular use is accessory to educational and religious institutions so long as the facts support an accessory use determination; and

WHEREAS, at hearing, the Board asked Appellant to explain in greater detail why these cases had any bearing on the instant appeal; Appellant failed to do so; and

WHEREAS, the Board notes that the instant matter was brought by Appellant and is the responsibility of Appellant to argue; thus, Appellant's failure to do more than merely cite to the cases with the inclusion of a very brief one sentence synopsis compels the Board to attempt to discern what Appellant's actual argument is; and

WHEREAS, accordingly, the Board conducted its own review of these cases and finds that all of them are distinguishable; and

WHEREAS, for instance, Town of Islip v. Dowling College, 275 A.D. 366 (2000) concerned a town declaration that "catering events" held at the educational institution in question were non-permitted uses under the town zoning code; and

WHEREAS, the court disagreed, stating that the catering events "are permitted educational uses"; and

WHEREAS, the opinion does not provide detail about the frequency or duration of the "catering events", but there is no indication that the court was reviewing the operation of a catering establishment comparable to Appellant's; and

WHEREAS, because the opinion does not specify with any precision what was being reviewed, Appellant's reliance on the case as justification for the argument that it requires the Board to find that the Catering Establishment is accessory to the School or Synagogue is misplaced; and

WHEREAS, moreover, the court did not hold that the catering events were in fact accessory uses; the court instead declared that the catering events were permitted uses under the town code; the exact nature of how the court arrived at this determination is not specified; and

WHEREAS, further, the Board notes that the ZR contains a very specific and well-crafted "Accessory use" definition, and the Town of Islip case does not consider this definition; and

WHEREAS, finally, the catered events considered by the court were for students of the college; here, Appellant concedes that not all catered events are related to School students or staff or to the Synagogue's congregants; and

WHEREAS, Appellant also cites to the New York Botanical Garden decision referenced above; and

WHEREAS, in this matter, the court upheld a Board determination that a university's radio station was permitted a 480-ft. radio tower as an accessory educational use; and

WHEREAS, the court upheld the Board's determination that high-power radio stations and towers were both incidental to, and customarily found in connection with, college campuses in New York and elsewhere in the United States; and

WHEREAS, as established above, Appellant did not provide any evidence that the Catering Establishment is an incidental use to the School or Synagogue, nor any evidence that such a catering establishment is customarily found in other religious schools or houses of worship, either in the City, New York State, or elsewhere in the United States; and

WHEREAS, the Board also notes that a radio tower has an inextricable accessory relationship to a college radio station, and therefore to the educational mission of the college; and

WHEREAS, the Catering Establishment has no such connection to the mission of the School or the Synagogue; and

WHEREAS, Appellant next cites to Greentree at Murray Hill Condominium v. Good Shepard Episcopal Church, 146 Misc. 2d 500 (1989); and

WHEREAS, in this case, the court found that a church-run shelter for ten homeless men could properly be characterized as an accessory use under ZR § 12-10; and

WHEREAS, the court cited to other cases where social and recreational activities of a religious institution were found to be accessory uses; and

WHEREAS, the Board understands that if the School or Synagogue were to shelter homeless individuals in the cellar of the Building, the Greentree case would have some applicability to a determination as to whether such use was accessory; and

WHEREAS, however, the temporary shelter of ten homeless men is not analogous to the approximately 150 catered events, with approximately 400 guests, that occur at the Catering Establishment on a yearly basis; and

WHEREAS, thus, the Board concludes that the Greentree case is distinguishable; and

WHEREAS, Appellant also cites to Flagg v. Murdock, 172 Misc. 1048 (1939); and

WHEREAS, in this case, the court found that a dancing school within a residential building in a residence zone was actually a school for purposes of the zoning code then in effect, and was thus permitted as a primary use; and

WHEREAS, ironically, the Flagg court also addressed six commercial uses present in the same residential building: a barbershop, a dress shop, a gift shop, a shoe repair shop, a tailor shop, a restaurant, and a beauty parlor; and

WHEREAS, such uses were not permitted in the residence district, so the operators of certain of these uses argued that they were accessory to the residential use since they served the occupants of the building; and

WHEREAS, the court rejected this argument, noting that such business uses were not permitted as an accessory use by the zoning code then in effect; and

WHEREAS, again, the Board finds that this case does not support Appellant's position; rather, it is contrary to it; and

WHEREAS, Appellant then cites to four out-of-state cases; and

WHEREAS, the Board finds that these cases are not particularly good precedent, since none of them concern ZR

§ 12-10 ("Accessory use") or the case law of this state; thus, it is unnecessary to examine them; and

WHEREAS, however, in passing, the Board observes that none of the cases concern a commercial catering establishment alleged to be operating at the intensity and frequency of the establishment in question; and

WHEREAS, in sum, the Board finds that none of the cases cited by Appellant require the Board to deem the Catering Establishment an accessory use to the School or Synagogue; and

APPELLANT'S REFERENCE TO "BINGO/LAS VEGAS NIGHT" EVENTS

WHEREAS, Appellant argues that since non-profit institutions can conduct bingo and "Las Vegas night" events on an accessory basis in order to raise money for charitable purposes, the Catering Establishment must also be deemed an accessory use; and

WHEREAS, despite repeated requests by the Board to provide a more detailed explanation, a review of Appellant's submissions and statements made at hearing reveals that this argument was never substantiated; and

WHEREAS, instead, Appellant submitted documentation in purported support of the argument without explanation; and

WHEREAS, for example, Appellant submitted lists of entities that are authorized by the State of New York to conduct such activities; and

WHEREAS, what Appellant failed to submit was any information as to how many of these entities in fact engaged in bingo or Las Vegas nights, and if so, to what extent; and

WHEREAS, thus, at most, the lists do nothing more than establish that numerous entities throughout the State seek approval for bingo or Las Vegas night activities; and

WHEREAS, Appellant also cites to a DOB letter, dated September 28, 1978, which reads in pertinent part "[p]lace of Assembly permits have been issued for bingo only where premises can be lawfully occupied as meeting halls, whether as a primary use (Use Group 6 in the Zoning Resolution), or accessory to a primary use such as a church, synagogue, non-profit intuition, etc. on the same site. Games of chance may be substituted for bingo only when such use was clearly on the same site on, and accessory to, such primary uses as churches, synagogues, etc. When not accessory to such a primary use, a premises devoted exclusively to 'games of chance' as an alternate to bingo (meeting halls) can become indistinguishable from amusement arcades and the like, posing a problem for … communities in general . . . Obviously, in such instances, a new certificate of occupancy should be obtained (if the Zoning Resolution so permits) after the filing of an Alteration application, and a new P.A. permit obtained predicated on such new use."; and

WHEREAS, while this letter indicates that bingo and gaming nights may be accessory to religious institutions, it does not state that they are always accessory to religious institutions; and

WHEREAS, instead, the letter indicates that such uses may not always be accessory, and if they are not, they must be legalized if possible; and

WHEREAS, nothing in this letter suggests that DOB cannot or will not scrutinize each particular instance of bingo or gaming nights in order to determine if such use is accessory; and

WHEREAS, nonetheless, Appellant argues that because of this letter, the Catering Establishment must be recognized as accessory by DOB as well; and

WHEREAS, presumably, Appellant believes that there is no difference between hosting a bingo or Las Vegas night and the operation of a catering establishment; and

WHEREAS, however, DOB states, and the Board agrees, that the 1978 letter does not give non-profit institutions the ability to conduct bingo or Las Vegas nights to whatever degree is desired; and

WHEREAS, DOB states that it would allow occasional use of non-profit facilities for such activities provided that they were intended primarily for participation by members of the non-profit; and

WHEREAS, here, the information provided by Appellant indicates that the Catering Establishment is in operation on a daily or near-daily basis many times during the year, and serves not just individuals with a direct relation to the School and Synagogue, but members of the larger Jewish community, in New York City and elsewhere; and

WHEREAS, additionally, another relevant factor is the frequency of the activity; and

WHEREAS, DOB states that it would allow bingo or Las Vegas nights one to two nights per week, which means that a non-profit could engage in such nights a total of 52 to 104 times per year; and

WHEREAS, however, such activities would not occur every night for weeks at a time; and

WHEREAS, nor would such activities be the equivalent of a primary commercial use, as the Catering Establishment is; and

WHEREAS, finally, the Board notes that Appellant believes that bingo and Las Vegas nights are purely revenue producing events, and therefore are clearly not incidental to the principal use; and

WHEREAS, assuming that Appellant is correct, then analogy to such events provides no guidance, since such uses would not meet the definition of "accessory use"; and

WHEREAS, again, the Board reiterates that the categorization of a use as accessory is a fact-intensive inquiry that depends on a variety of factors specific to each institution and each proposed accessory use, as well as the surrounding neighborhood; and

WHEREAS, thus, the Board finds that DOB has no authority to predetermine whether a particular use is accessory in all circumstances, and further finds that the 1978 letter cannot be read in this manner; and

WHEREAS, instead, like the listing of accessory use examples set forth in ZR § 12-10, the 1978 letter is merely a guideline, useful to DOB in determining what should occur when a bingo or gaming night use fails to meet the test for

accessory use; and

WHEREAS, in sum, the ability of institutions to engage in occasional bingo nights or other recreational activities on an accessory basis does not mandate that the Board find that the Catering Establishment is an accessory use; and

APPELLANT'S REFERENCE TO THE BOARD'S PRIOR DETERMINATION

WHEREAS, during the hearing process, Appellant discussed a prior Board decision made under BSA Cal. No. 121-00-A; and

WHEREAS, in this matter, the Board considered: (1) whether the construction of a 3,000 seat baseball facility for St. John's University (the "University") was an accessory use to the University; and (2) whether the time-limited use of the baseball facility by a professional baseball team negated the accessory use status; and

WHEREAS, as reflected in its resolution, dated June 27, 2000, the Board concluded that the facility was an accessory use and that the time-limited use of the facility by a professional team did not compromise the status of the field as an accessory use; and

WHEREAS, the Board based its conclusion as to the second issue, in part, on evidence that colleges and universities elsewhere rented out their athletic facilities to professional sports teams; and

WHEREAS, the Board also noted that the use of the facility by the professional team was part of an arrangement between the University, the professional team, and the City's Economic Development Corporation ("EDC"); and

WHEREAS, the Board's determination was subsequently upheld in court (*see* Padavan v. City of New York, Index No. 26763/98 (July 20, 2000)); and

WHEREAS, Appellant argues that the Board's decision as to the University compels a finding that the Catering Establishment is an accessory use to the School; and

WHEREAS, Appellant claims that since the baseball facility would be rented out to a professional team and apparently used by community groups and not just the University, the Board was in effect holding that not all use of accessory facility must relate directly to the primary uses; and

WHEREAS, as an initial matter, the Board must once again point out that prior accessory use determinations on a set of facts entirely different than those present here are not binding nor particularly helpful in determining whether the Catering Establishment is an accessory use; and

WHEREAS, the Board is not considering whether the School may create a field for its baseball team (presuming it has one) nor whether, if such a field was built, it could be rented out to a commercial sports league on a time-limited basis; and

WHEREAS, as noted above, the factors evaluated in a particular accessory use question will vary depending on the use; and

WHEREAS, here, the Board is presented with a catering facility that, by Appellant's own admission, hosts approximately 75 events per year, both historically and going forward, that have no relation whatsoever to the School or Synagogue; and

WHEREAS, in the case involving the University, the use of the field by the professional team was limited to 38 home games, practices and perhaps some playoff games, only for a maximum two-year period, while the field would actually be in service for University purposes for at least seven years; and

WHEREAS, further, the Board was satisfied that such professional use of the field was customarily found in connection with institutions of higher learning; and

WHEREAS, here, Appellant has not established that other houses of worship customarily conduct catering activities unrelated to the institution to the extent that the Catering Establishment does; and

WHEREAS, Appellant also suggests that the Board's prior determination was unfounded because there is actually no basis to conclude that colleges and universities actually lease their facilities to professional sports teams such that it can be considered customary; and

WHEREAS, since the prior Board did make this finding and since this was upheld by a court, the Board declines to revisit the issue now; and

WHEREAS, in any event, Appellant has no standing to challenge this determination; and

WHEREAS, in sum, the Board does not find that its prior decision is determinative of the matter at hand; and

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

WHEREAS, finally, Appellant appears to suggest that the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), a federal law, requires that the Board grant this appeal; and

WHEREAS, RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, first, the Board observes that regardless of whether the Board finds that the Catering Establishment is an accessory use, the School and the Synagogue are permitted uses under the R5 zoning district regulations, and may remain legally on the site; and

WHEREAS, further, Appellant is free to hold, and even charge money for events, in the cellar to the extent that they are accessory; and

WHEREAS, there is simply no evidence that would support the conclusion that the Board, in denying this appeal, is imposing a substantial burden on or even interfering with the exercise of religious freedom or religious practices of the School or the Synagogue; and

WHEREAS, Appellant's contention that the School and the Synagogue would not be able to cover expenses

without the on-site Catering Establishment, even if proved to be a fact, does not lead to a contrary conclusion; and

WHEREAS, further, it is difficult for the Board to understand why RLUIPA should function to support an otherwise unsupportable accessory use determination in order to support a revenue stream for a religious entity that is unable to support its non-commercial uses through traditional means; and

WHEREAS, accordingly, the Board declines to apply RLUIPA in the novel way that Appellant suggests; and

WHEREAS, the Board observes that the court in Episcopal Student Foundation vs City of Ann Arbor, 341 FSupp2d 691 (ED Michigan 2004) held that zoning regulations that imposed financial burdens on a church do not constitute substantial burdens under RLUIPA; and

WHEREAS, thus, even if the Catering Establishment is required to be relocated at a cost, or if the activities conducted there are limited to events that are accessory to the School or Synagogue, with a resulting decrease in revenue, this is not a substantial burden under RLUIPA; and

WHEREAS, in addition, the Episcopal Student Foundation court held that a zoning ordinance does not infringe on the free exercise of religion where religious activity can occur elsewhere in the municipality; and

WHEREAS, thus, even if the operation of the Catering Establishment can properly be characterized as religious in nature (despite its status under the ZR as a commercial use), since it is allowed in certain commercial zoning districts that are mapped liberally throughout the City, including in the vicinity of the subject site, Appellant's alleged free exercise rights are not compromised; and

CONCLUSION

WHEREAS, in sum, the Board has reviewed the record and finds that the Catering Establishment as currently operating is not an accessory use to either the School or the Synagogue; and

WHEREAS, accordingly, the Final Determination must be upheld and this appeal must be denied; and

WHEREAS, in so concluding the Board notes the following: (1) this determination does not render the School or Synagogue illegal in any respect; (2) the cellar may still be used as a cafeteria in conjunction with the School; (3) events that are accessory to the School and/or Synagogue may be held in the cellar pursuant to the approval of DOB and in accordance with this decision.

*Therefore it is Resolved* that this appeal, which challenges a Department of Buildings final determination dated March 31, 2006 issued by the Brooklyn Borough Commissioner, is denied.

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**99-06-BZ**

APPLICANT– Patrick W. Jones, P.C., for Norsel Realties c/o Steinberg & Pokoik, owners; Mothers Work, Inc., lessee.

SUBJECT – Application May 15, 2006 – Special Permit §73-36 – to permit the legalization of an existing physical cultural establishment (Edamame Spa) located in the cellar portion of a 25 story commercial building located within a C5-3 (MID) Zoning District.

PREMISES AFFECTED – 575 Madison Avenue (a/k/a 53/57 East 56th Street, a/k/a 28/30 East 57th Street) East side of Madison Avenue, between East 56th and East 57th Streets, Block 1292, Lot 52, Borough of Manhattan.

**COMMUNITY BOARD # 5M**

APPEARANCES – None.

**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 May 12, 2006, acting on Department of Buildings Application No. 104418621, reads in pertinent part:

> "The proposed Physical Culture Establishment in the C5 zoning district requires a special permit from the Board of Standards and Appeals (ZR 32-31)."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District, the legalization of a physical culture establishment (PCE) in the cellar of an existing 25-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 5, 2006 after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, the site was inspected by a committee of the Board; and

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

WHEREAS, the subject site is located on the east side of Madison Avenue, between East 56th and East 57th Streets; and

WHEREAS, the PCE currently occupies a total of 1,292 sq. ft. of space in the cellar of the building; and

WHEREAS, the applicant represents that the PCE will offer facilities for spa treatments and massages performed by licensed massage therapists; and

WHEREAS, the PCE will maintain the following hours of operation: : Monday through Wednesday, Friday, and Saturday, 10:00 a.m. to 7:00 p.m.; Thursday, 10:00 a.m. to 5:00 p.m.; and Sunday, 12:00 p.m. to 6:00 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 establishment of 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. 06-BSA-089M, dated July 5, 2006; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, within a C5-3 zoning district within the Special Midtown District the legalization of a PCE in the cellar of an existing 25-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 19, 2006"-(5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on January 9, 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 massages shall only be performed by New York State licensed massage therapists;

THAT the hours of operation shall be limited to: Monday through Wednesday, Friday, and Saturday, 10:00 a.m. to 7:00 p.m.; Thursday, 10:00 a.m. to 5:00 p.m.; and Sunday, 12:00 p.m. to 6:00 p.m.;

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

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

THAT 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, January 9, 2007.

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**124-06-BZ**

APPLICANT– Law Office of Fredrick A. Becker, for Nasanel Gold, owner.

SUBJECT – Application June 13, 2004 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and rear yard (§34-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1078 East 26th Street, East 26th Street between Avenue J and Avenue K, Block 7607, Lot 83, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra Altman and David Shteierman.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 15, 2006, acting on Department of Buildings Application No. 302165403, reads in pertinent part:

"Proposed floor area contrary to ZR 23-141.

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

Proposed side yard is contrary to ZR 23-48.

Proposed rear yard is contrary to ZR 23-47."; and

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

23-141, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on December 12, 2006, after due notice by publication in *The City Record*, and then to decision on January 9, 2007; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on the condition that the enlargement not extend further into the rear yard; and

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

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue J and Avenue K; and

WHEREAS, the subject lot has a total lot area of 2,500 sq. ft., and is occupied by a 2,086.14 sq. ft. (0.83 FAR) single-family home; and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,086.14 sq. ft. (0.83 FAR) to 2,600.38 sq. ft. (1.04 FAR); the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-0 1/2" and reduce the other side yard to 5'-2" (side yards totaling 10'-0" are required with a minimum width of 5'-0" for each); and

WHEREAS, the proposed enlargement will provide a rear yard of 22'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, the proposed enlargement will provide for an open space ratio of 54.28 percent (an open space ratio of 150 percent is the minimum required); and

WHEREAS, the proposed enlargement will be two stories with attic and will be located entirely at the rear of the existing home; and

WHEREAS, the Board notes that the enlargement will not be clearly visible from the street; and

WHEREAS, in response to the Community Board's comment about enlarging further into the rear yard, the Board notes that the special permit clearly contemplates enlargements at the rear of homes since they are deemed to have less impact on the character of the neighborhood and result in the least change to the streetscape as they are not visible from the street; and

WHEREAS, the Board notes that the FAR increase is comparable to other FAR increases that the Board has granted through the subject special permit for lots of comparable size in the subject zoning district; and

WHEREAS, the Board also notes that the FAR request is reasonable as it represents a modest increase to the existing FAR; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

*Therefore it is Resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit within an R2 zoning district, the proposed enlargement of a single-family dwelling, which does not comply with the zoning requirements for open space, floor area, and rear and side yards, contrary to ZR §§ 23-141, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 27, 2006"–(8) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT floor area in the attic shall not exceed 510.84 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 2,600.38 sq. ft., a total FAR of 1.04, one side yard of 5'-2", one side yard of 2'-0 1/2", a rear yard of 22'-0", and an open space ratio of 54.28 percent, as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s); no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, January 9, 2007.

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**252-06-BZ**

APPLICANT – Randolph Croxton, for Mount Hope Community Center, owner.

SUBJECT – Application September 15, 2006 – Variance

pursuant to Z.R. §72-21 to permit the construction of a four-story Use Group 4 community center facility. The premises is located in an R8 zoning district and is currently a vacant lot. The proposal is seeking waivers of Z.R. §24-36 and §24-393 (proposed portion of the new building located in the rear yard is not a permitted obstruction per Z.R. §24-33 (b) paragraph (3)). A waiver of §24-382 is also requested relating to the proposed portion of the new building on a through lot exceeding 110 feet in depth which requires a rear yard equivalent.

PREMISES AFFECTED – 55 East 175th Street, between Townsend Avenue and Walton Avenues, Lot 2850, Lot 38, Borough of The Bronx.

**COMMUNITY BOARD #5BX**

APPEARANCES – None.

**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 Bronx Borough Commissioner, dated August 22, 2006, acting on Department of Buildings Application No. 200983301, reads in pertinent part:

"1. In an R8 zoning district, the proposed portion of the new building located on a through lot exceeding 110' in depth requires a rear yard equivalent per Section 24-382 ZR.
2. In an R8 zoning district, the proposed portion of the new building located in the rear yard required per Sections 24-36 and 24-393 ZR is not a permitted obstruction per Section 24-33(b) paragraph (3) ZR"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the construction of a four-story community center facility (Use Group 4), which is contrary to ZR §§ 24-33 and 24-382; and

WHEREAS, the applicant proposes a multi-level building with one, two, three, and four story components (including a gymnasium) with a total floor area of 41,985 sq. ft. (1.58 FAR); and

WHEREAS, a public hearing was held on this application on November 14, 2006, after due notice by publication in the *City Record*, with a continued hearing on December 12, 2006, and then to decision on January 9, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Bronx, recommends approval of the application; and

WHEREAS, the Borough President provided testimony in support of the application; and

WHEREAS, certain community members provided testimony in support of the application; and

WHEREAS, this application is brought on behalf of the Mount Hope Housing Company (the "Center"), a nonprofit institution; and

WHEREAS, the zoning lot, which comprises former tax lots 34, 38, and portions of lots 60 and 63, is located in the southern half of the block bounded by Townsend and Walton Avenues and 176th and 175th Streets; and

WHEREAS, the shape of the site is that of two adjacent rectangles – a 140 ft. by 100 ft. rectangle at the corner of East 175th Street and Townsend Avenue and a 125 ft. by 100 ft. rectangle at the interior of the block with frontage on Townsend Avenue and Walton Avenue - which abut at the center of the block for a distance of 40 feet; and

WHEREAS, because of the site's unique shape, the zoning lot has three components: (1) a corner lot on the southeast corner of Townsend Avenue and East 175th Street (the "Corner Lot"), (2) a through lot with frontage on Townsend Avenue and Walton Avenue (the "Through Lot"), and (3) an interior lot with frontage on Walton Avenue, between East 175th Street and East 176th Street (the "Interior Lot"); and

WHEREAS, the Corner Lot is a 100 ft. by 100 ft. square, the Through Lot is a rectangle with 40 feet of frontage on both Townsend Avenue and Walton Avenue and a depth of 200 feet; and the Interior Lot is a rectangle with frontage on Walton Avenue, frontage of 85 feet on Walton Avenue, and a depth of 100 feet; and

WHEREAS, the subject site is within an R8 zoning district; and

WHEREAS, the subject site has a total lot area of 26,500 sq. ft. and is unimproved; and

WHEREAS, the Center proposes to construct a community facility building on the site, with a one-story gymnasium on the Interior Lot and a portion of the Through Lot, and a primary building with heights ranging from one to four stories on the Through Lot and the Corner Lot; and

WHEREAS, the primary building will be occupied by office space, meeting rooms and classrooms; and

WHEREAS, the Center purchased the site and designed its new building prior to a ZR text change affecting community facilities, noted below; and

WHEREAS, the applicant represents that due to budgetary constraints, the building was not constructed; and

WHEREAS, the applicant represents that the proposed community facility was designed to achieve efficient floor plates and to accommodate all of the Center's services, which are currently located in several different locations; and

WHEREAS, the applicant notes that in 2004 there was a text amendment to ZR § 24-33 related to community facility use, which prohibits rear yard encroachments located beyond 100 feet of the intersection of a wide street except for certain uses such as schools, hospitals, and houses of worship; the proposed community facility is not among the enumerated

exceptions; and

WHEREAS, the applicant proposes to encroach into the rear yard equivalent on the Through Lot for one story, and a small two-story portion, for a height of less than 23 feet; the applicant proposes to encroach into the rear yard of the Interior Lot for one story, for a height of less than 23 feet; and

WHEREAS, the portions of the building that require waivers would have been as-of-right under the former zoning as permitted obstructions of one story and less than 23 feet in height in the rear yard (and rear yard equivalent) of a community facility building; and

WHEREAS, the rear yard requirements for each portion of the lot are as follows: (1) no rear yard is required for the Corner Lot; (2) a 60 ft. rear yard or 60 ft. of rear yard equivalent is required for the Through Lot; and (3) a 30 ft. rear yard is required for the Interior Lot; and

WHEREAS, because the applicant proposes full lot coverage for the Through Lot and Interior Lot, waivers are required for rear yard equivalent and rear yard, respectively; and

WHEREAS, the Center currently occupies a small inadequate office with several smaller spaces in apartment buildings it manages; and

WHEREAS, the applicant states that the following are the programmatic needs of the Center: (1) a need to consolidate its community outreach facilities into one center; (2) a need to expand recreational programming for youth, including a large number of asthma sufferers, in a safe clean environment; (3) a need to expand the educational programs; (4) a need for community meeting space; and (5) a need to promote a commitment to the environment; and

WHEREAS, in addition, the applicant asserts that the irregular shape of the lot constrains a complying use; and

WHEREAS, in order to meet the programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the rear yard and rear yard equivalent waivers are necessary to provide an adequate gymnasium with regulation/standard sized facilities; and

WHEREAS, the applicant represents that without the waivers, the gymnasium would be too constrained to fit on the Interior Lot and that a feasible design could not be accommodated if the gymnasium were relocated on the Corner Lot due to the need for an entrance courtyard; and

WHEREAS, because providing a recreation space which can be used year round is an important goal of the Center, the accommodation of the gymnasium on the Interior Lot is necessary; and

WHEREAS, further, the applicant represents that the waivers are required in order to provide circulation within the building and access to all the required services; access would be cut off if encroachment into the rear yard and rear yard equivalent was not permitted; and

WHEREAS, the Board finds that the Center's programmatic needs are legitimate, and agrees that the proposed building is necessary to address the Center's needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site including its noted irregular shape and unique configuration, when considered in conjunction with the programmatic needs of the Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, specifically, the applicant states that the site is located in a primarily residential area and is surrounded by a number of five and six-story multi-dwelling buildings; there are also two schools to the north of the subject block; and

WHEREAS, additionally, the applicant states that there is a new seven-story residential building on the northeast corner of the block, with a grocery store and laundromat on the first floor; and

WHEREAS, further, the applicant states that the building has been designed so that its height respects the adjacent residential uses by providing setbacks and confining the tallest portions of the building to portions of the Corner Lot and Through Lot; and

WHEREAS, the applicant notes that the building also provides open space in the form of an entrance courtyard on 175th Street, which is compatible with the context for entrance courtyards in the surrounding area; and

WHEREAS, specifically, the applicant will limit the encroachments into the rear yard and rear yard equivalent to one story (except for a small two-story portion on the Through Lot) and heights ranging from 14 ft. to 23 ft. so as to minimize any impact; and

WHEREAS, additionally, the applicant states that the building design includes materials and landscaping which are compatible with that of nearby buildings; and

WHEREAS, the Center proposes to provide open space at the front of the East 175th Street frontage and additional terraces and open spaces at various levels to contribute to the open space of the area and to promote the environmental initiatives of the Center; and

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

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

existing lot given the existing conditions; and

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

WHEREAS, the applicant represents that the requested waivers for rear yard and rear yard equivalent are the minimum waivers necessary to accommodate the Center's current and projected programmatic needs; and

WHEREAS, the applicant notes that the proposed building will have a total floor area of 41,985 sq. ft. (1.58 FAR) which is less than one third of the permitted floor area for a community facility in the subject R8 zoning district (a maximum floor area of 172,250 sq. ft. (6.5 FAR) is permitted); and

WHEREAS, the Board notes that the applicant will limit the encroachments into the rear yard and rear yard equivalent, as discussed above, so as to minimize any impact; and

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

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

WHEREAS, the project is classified as a Type II action pursuant to Sections 617.13 of 6 NYCRR; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, the construction of a four-story community center facility (Use Group 4), which is contrary to ZR §§ 24-33 and 24-382, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 15, 2006"–(3) sheets and "October 25, 2006"–(6) sheets and; and *on further condition*:

THAT the total floor area shall not exceed 41,985 sq. ft. (1.58 FAR), as illustrated on the BSA-approved plans;

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

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, January 9, 2007.

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**87-05-BZ**

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

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

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

**COMMUNITY BOARD #7BK**

APPEARANCES –

For Applicant: Eric Palatnik, and Randy Peres, CB #7.

**ACTION OF THE BOARD** – Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

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**330-05-BZ**

APPLICANT– Vito J. Fossella, P.E., for Frank Bennett, owner.

SUBJECT – Application November 16, 2005 – Special permit (§73-36). In a C2-2/R3-2 district, on a lot consisting of 5,670 SF, and improved with two one-story commercial buildings, permission sought to allow a physical culture establishment in the cellar of one existing building in 350 New Dorp Lane and in the enlarged cellar of an existing adjacent retail building at 346 New Dorp Lane.

PREMISES AFFECTED – 350 New Dorp Lane, Block 4221, Lot 53, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

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

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**29-06-BZ**

APPLICANT– Sheldon Lobel, P.C., for lliva Honovich, owner.

SUBJECT – Application February 16, 2006 – Zoning variance pursuant to ZR § 72-21 to allow a proposed multiple family dwelling containing fourteen (14) dwelling units to violate applicable floor area, open space, lot coverage, density, height and setback, and front and side yards requirements; contrary to ZR §§ 23-141, 23-22, 23-45, 23-461 and 23-633. Premises is located within an R4 district.

PREMISES AFFECTED – 1803 Voorhies Avenue, East 18th Street and East 19th Street, Block 7463, Lots 47, 49, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

APPEARANCES –

For Applicant: Irving Minkin.

**ACTION OF THE BOARD –** Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

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**49-06-BZ**
APPLICANT – Sheldon Lobel, P.C., for Brigitte Zabbatino, owner.
SUBJECT – Application March 17, 2006 – Variance under §72-21. In the Flatlands section of Brooklyn, and in a C1-2/R3-2 district on a lot consisting of 5,181 SF, permission sought to permit the construction of a three-story commercial building, with ground floor retail and office space on the second and third floors. The development is contrary to FAR, height and setback, and minimum parking. Parking for 12 vehicles in the cellar is proposed. The existing one-story structure consisting of approximately 2,600 SF will be demolished.
PREMISES AFFECTED – 2041 Flatbush Avenue, at the intersection of Flatbush Avenue and the eastern side of Baughman Place. Block 7868, Lot 18, Borough of Brooklyn.
**COMMUNITY BOARD #18BK**
APPEARANCES –
For Applicant: Richard Lobel and Robert Pauls.

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

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**50-06-BZ**
APPLICANT – Jeffrey A. Chester, Esq., for 461 Carool Strait, LLC, owner.
SUBJECT – Application March 20, 2006 – Use Variance pursuant to Z.R. §72-21 to permit the conversion and expansion of a commercial/industrial building to a two-family residence. The premise is located in a M1-2 zoning district. The waiver requested relates to the use regulations pursuant to Z.R. §42-00. The subject site was previously used by Linda Tool Co., a custom tool and dye manufacturer which occupied the premises for several decades.
PREMISES AFFECTED – 461 Carroll Street, between Nevins Street and Third Avenue, Block 447, Lot 45, Borough of Brooklyn.
**COMMUNITY BOARD #6BK**
APPEARANCES – None.

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

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**54-06-BZ**
APPLICANT – Eric Palatnik, P.C., for The Cheder, owner.
SUBJECT – Application March 21, 2006 – Variance application pursuant to Z.R. §72-21 to permit the development of a three-story and cellar Use Group 3 Yeshiva for grades 9 through 12 and first, second, and third years of college as well as an accessory dormitory use (Use Group 4) to house a small portion of those college age students. The Premises is located within a R3-1 zoning district. The site is currently occupied by two single-family dwellings which would be demolished as part of the proposal. The proposal seeks to vary ZR §113-51 (Floor Area); §113-55 and §23-631 (Perimeter Wall Height, Total Height and Sky Exposure Plane); §113-542 and §23-45 (Front Yard and Setback); §113-543 and §23-461(a) (Side Yard); §113-544 (Rear Yard); §113-561 and §23-51 (Parking); and §113-22 (Loading Berth).
PREMISES AFFECTED – 401 and 403 Elmwood Avenue, between East 3rd and East 5th Streets, Block 6503, Lot 99, Borough of Brooklyn.
**COMMUNITY BOARD #12BK**
APPEARANCES –
For Applicant: Eric Palatnik, David Shteierman, Nisson Wolpin, Martin Katz and Rabbi Edgar Gluck.
For Opposition: Stuart Klein, Marin Pope, Eli Feit, Michael Gregorio, Pinny Sefir, Alfred Langner, Philip G. Kee, III, Rachel Fracnco, Pat Johnson, Barry Rosner, Farge Krausz and Renee Dweck.
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 February 27, 2007, at 1:30 P.M., for decision, hearing closed.

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**64-06-BZ**
APPLICANT – Greenberg Traurig LLP/Jay A. Segal, for 363 Lafayette LLC, owner.
SUBJECT – Application April 11, 2006 – Zoning variance pursuant to Z.R. §72-21 to allow a seven (7) story multi-family residential building with ground floor retail containing fourteen (14) dwelling units. The site is located within an M1-5B district; contrary to Z.R. §42-10.
PREMISES AFFECTED – 363-371 Lafayette Street, between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.
**COMMUNITY BOARD #2M**
APPEARANCES –
For Applicant: Jay Segal.

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

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**75-06-BZ**
APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development, owner.
SUBJECT – Application April 25, 2006 – Zoning variance pursuant to §72-21 to allow a proposed twenty-one (21) story residential building with ground floor retail and community facility uses to violate applicable FAR (§23-142 and §35-22), open space ratio (§23-142, §35-22 and §35-33) and sky exposure plane (§23-632) regulations. The proposed building would include 136 dwelling units and 146 parking spaces. The project site is located within an R7-1/C1-2 zoning district.
PREMISES AFFECTED – 108-20 71st Avenue, northeast

corner of Queens Boulevard and 71st Avenue, Block 2224, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

APPEARANCES – None.

**ACTION OF THE BOARD –** Laid over to March 6, 2007, at 1:30 P.M., for continued hearing.

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**79-06-BZ**

APPLICANT – Patrick W. Jones, P.C., for Bergen R.E. Corp., owner.

SUBJECT – Application April 28, 2006 – Variance (§72-21) to permit the construction of a five-story residential building on a vacant site located in an M1-1zoning district. The proposal is contrary to §42-00.

PREMISES AFFECTED – 887 Bergen Street, north side of Bergen Street, 246' east of the intersection of Bergen Street and Classon Avenue, Block 1142, Lot 85, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

APPEARANCES –

For Applicant: Steven Sinacori.

For Opposition: Meredith Statone, CB #8 and Amyre Loomis.

**ACTION OF THE BOARD** – Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

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**82-06-BZ**

APPLICANT– Eric Palatnik, P.C., for Utopia Associates, owner; Yum Brands, Inc., lessee.

SUBJECT – Application May 2, 2006 – pursuant to Z.R. §72-21 to request a variance to permit the re-development of an existing non-conforming eating and drinking establishment (Use Group 6) with an accessory drive-thru located in an R3-2 zoning district and contrary to Z.R. §22-00. The existing accessory drive-thru was authorized through a prior BSA approval (168-92-BZ).The proposal would create a new eating and drinking establishment (Use Group 6) with accessory drive-thru.

PREMISES AFFECTED – 172-12 Northern Boulevard, between 172nd Street and Utopia Parkway, Block 5511, Lot 1, Borough of Queens.

**COMMUNITY BOARD # 7Q**

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls and Eric Meyer.

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 February 6, 2007, at 1:30 P.M., for decision, hearing closed.

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**137-06-BZ**

APPLICANT– Rothkrug Rothkrug & Spector, LLP, for Adragna Realty, LLC., owner.

SUBJECT – Application June 30, 2006 – Variance (§72-21) for the proposed construction of a two-family dwelling on a vacant lot that does not provide a required side yard (§23-461) and does not line up with front yard line of adjacent lot (§23-45 (b)) in an R4A zoning district.

PREMISES AFFECTED – 1717 Hering Avenue, west side of Hering Avenue 325' south of Morris Park Avenue, Block 4115, Lot 23, Borough of The Bronx.

**COMMUNITY BOARD # 11BX**

APPEARANCES –

For Applicant: Hiram Rothkrug.

**ACTION OF THE BOARD –** Laid over to February 13, 2007, at 1:30 P.M., for continued hearing.

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**141-06-BZ**

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

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

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

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Eric Palatnik, Martin Katz.

For Opposition: Leo Weinberger, Vito Pictanza, Joseph Oliva, Lucille Catania, Barbara Pulice, Amadeo Zelferino and Shirl Basehore.

**ACTION OF THE BOARD** – Laid over to March 13, 2007, at 1:30 P.M., for continued hearing.

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**181-06-BZ**

APPLICANT – Greenberg Trarurig, LLP, by Jay Segal/Deirdre Carson, for 471 Washington Street Partners, owners.

SUBJECT – Application August 21, 2006 – Zoning variance pursuant to (§72-21) to allow a nine (9) story residential building containing seven (7) dwelling units and ground floor retail use in an M1-5 district (Area B-2 of the Special Tribeca Mixed Use District). The proposal is contrary to use regulations (§42-10 and §111-104(d)).

PREMISES AFFECTED – 471 Washington Street (a/k/a 510-520 Canal Street), Block 595, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES –

For Applicant: Jay Segal, Ben Hansen and Margo Fleug.

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 February 13, 2007, at 1:30 P.M., for decision, hearing closed.

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**263-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Breindi Amsterdam and Eli Amsterdam, owners.

SUBJECT – Application September 26, 2006 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space and floor area §23-141(a) in an R2 zoning district.

PREMISES AFFECTED – 2801-2805 Avenue L (a/k/a 1185-1195 East 28th Street) northeast corner of the intersection of East 28th Street and Avenue L, Block 7628, Lot 8, Borough of Brooklyn.

**COMMUNITY BOARD # 14BK**

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to February 6, 2007, at 1:30 P.M., for continued hearing.

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**267-06-BZ**

APPLICANT– Stadtmauer Bailkin, LLP, for Philip Zerillo and Peter Zuccarello, owners.

SUBJECT – Application September 29, 2006 – Variance (§72-21). On a lot consisting of 5,902 SF, and located in an R2 district, permission sought to construct a two-story plus cellar commercial building. The structure will contain 3,431 SF (FAR .58), and will have five accessory parking spaces. The uses therein will be UG6 professional offices. Currently the site is improved with a 1,507 SF two-story, one-family vacant residential structure with a detached garage.

DOB Objection: §22-00: Proposed use is contrary to district use regulations.

PREMISES AFFECTED – 148-29 Cross Island Parkway, Block 4486, Lots 34, 35, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Steven Sinacori, Frank Macchio and Pat Carpentiere.

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

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*Jeff Mulligan, Executive Director*

*Adjourned:5:45 P.M.*