
BULLETIN

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July 19, 2007

DIRECTORY

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172-07-BZ

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173-07-BZ

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174-07-BZ

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175-07-BZ

90 West 225th Street, South side of 225th Street between Exterior Street and Broadway., Block 2215, Lot(s) 665, Borough of **Manhattan, Community Board: 7**. (SPECIAL PERMIT)-73-36-To permit a Physical Culture Establishment.

176-07-BZ

50-34 69th Street, Southwest corner of the intersection of Garfield Avenue and 69th Street., Block 2425, Lot(s) 33, Borough of **Queens, Community Board: 2**. Under 72-21-To permit the alteration and enlargement of an existing building for commercial use.

177-07-BZ

886 Glenmore Avenue, Corner of Glenmore Avenue and Milford Street, Block 4208, Lot(s) 17, Borough of **Brooklyn, Community Board: 7**. Under 72-21-Newly proposed 2 story, 2 family dwelling.

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

AUGUST 7, 2007, 10 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 7, 2007, at 10 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

517-68-BZ

APPLICANT – Alfonso Duarte, for 1667 Rental Depot Incorporated, owner.

SUBJECT – Application November 15, 2006 – Extension of Term/Amendment/Waiver of a variance previously granted pursuant to §72-21 permitting in an R3-2 district open automobile sales (UG 16A) with accessory office and automobile repairs on cars for sale. The application seeks to legalize the rental of automobiles and trucks (UG 8C). The term of the variance expired on October 7, 2005.

PREMISES AFFECTED – 1667 East Gun Hill Road, East side 175' south of Tiemann Avenue, Block 4802, Lot 21, Borough of the Bronx.

COMMUNITY BOARD #12BX

175-95-BZ

APPLICANT – H Irving Sigman, for Twi-light Roller Skating Rink, Incorporated, owner.

SUBJECT – Application April 25, 2007 – Extension of Term/Amendment/Waiver – To permit at the first floor level the extension of the existing banquet hall (catering establishment), (UG9) into an adjoining unoccupied space, currently designated as a store, (UG6) located in an C1-2/R3-2 zoning district.

PREMISES AFFECTED – 205-35 Linden Boulevard, North south 0' east of the corner formed by Linden Boulevard & 205th Street, Block 11078, Lot 1, Borough of Queens.

COMMUNITY BOARD # 12Q

8-05-BZ

APPLICANT – Sheldon Lobel, P.C., for James Pi, owner.

SUBJECT – Application January 18, 2005 – To consider dismissal for lack of prosecution – propose use, bulk and parking variance to allow a 17 story mixed-use building in R6/C1-2 and R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, a/k/a 51-35 Reeder Street, entire frontage on Queens Boulevard between Reeder Street and Broadway, Block 1549, 41 (a/k/a 41 & 28), Borough of Queens.

COMMUNITY BOARD # 4Q

284-05-BZ

APPLICANT – Alfonso Duarte for Constantine Zahria, owner.

SUBJECT – Application September 9, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow a four-story industrial building with rooftop parking in an M1-1 district.

PREMISES AFFECTED – 34-29 37th Street, East side 290.28' south of 37th Avenue, Block 645, Lot 15, Borough of Queens.

COMMUNITY BOARD # 1Q

309-05-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Pafos Realty Corporation, owner.

SUBJECT – Application October 17, 2005 – To consider dismissal for lack of prosecution – proposed bulk variance to allow.

PREMISES AFFECTED – 53-03 Broadway, North side of Broadway on the corner of Broadway and 53rd Place, Block 1155, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

287-06-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT – Application October 27, 2006 – To consider dismissal for lack of prosecution – proposed bulk variance to legalize a recently developed residential/community facility building with two non-complying side yards in an R5 dis.

PREMISES AFFECTED – 32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD # 1Q

77-07-A

APPLICANT – Burgher Avenue Property Management LLC, owner

SUBJECT – Application April 9, 2007 – Proposed construction of a one story commercial building not fronting on a mapped street contrary to Article 3, §36 of the General City Law. C2-1 Zoning District.

PREMISES AFFECTED – 32 Adele Street, between

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Burgher and Evergreen Avenue, Block 3329, Lot 63,
Borough of Staten Island.

COMMUNITY BOARD #2SI

82-07-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point
Cooperative, owner; Nadine & Edward Frerks, owner.

SUBJECT – Application April 17, 2007 – Proposal to
reconstruct and enlarge an existing single family dwelling
and upgrade an existing private disposal system partially
located within the bed of a mapped street (12th Avenue) is
contrary to General City Law §35 and the Department of
Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 71 Bedford Avenue, Bedford
Avenue and mapped 12th Avenue, 88.81' east of Beach
204th Street, Block 16350, Lot p/o 300, Borough of
Queens.

COMMUNITY BOARD #14Q

87-07-A

APPLICANT – Robert C. Miller, for Breezy Point
Cooperative, Inc., owner; James Naus, lessee.

SUBJECT – Application April 19, 2007 – Proposal to
reconstruct and enlarge an existing one family home and
upgrade of an existing private disposal system within the
bed of mapped street, (Bayside Drive) is contrary to
General City Law Section 35 and the Department of
Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 347 Roxbury Avenue,
northwest of Seabreeze Avenue, Block 16350, Lot 50,
Borough of Queens.

COMMUNITY BOARD #14Q

153-07-BZY

APPLICANT – Mitchell A. Korbey, Esq., for 20 Bayard
Views, LLC, owner.

SUBJECT – Application June 8, 2007 – Extension of time
(§11-332) to complete construction of a minor development
commenced prior to the amendment of the zoning district
regulations on May 11, 2005. M1-2 /R6B & M1-2 /R6A.
PREMISES AFFECTED – 20 Bayard Street, a/k/a 27-35
Richardson Street, a/k/a 17 Richardson Street, Bayard
Street between Union Avenue and Lorimer Street, Block
2721, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

AUGUST 7, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing,

*Tuesday afternoon, August 7, 2007, at 1:30 P.M., at 40
Rector Street, 6th Floor, New York, N.Y. 10006, on the
following matters:*

ZONING CALENDAR

426-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Expert Realty,
LLC, owner.

SUBJECT – Application December 28, 2005 – Variance
(\$72-21) to allow a two-level enlargement of an existing
one-story commercial building contrary to FAR regulations
(\$43-12). M1-1 district.

PREMISES AFFECTED – 57-02/08 39th Avenue and 39-
02 58th Street, Block 1228, Lots 48, 52, 57, Borough of
Queens.

COMMUNITY BOARD #2Q

16-07-BZ

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

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

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

COMMUNITY BOARD #10BX

33-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for
Marathon Hosiery, Co., Inc., owner.

SUBJECT – Application August 7, 2007 – Variance (\$72-
21) to permit the conversion of the upper four floors of an
existing five-story manufacturing building for residential
use. The Premises is located in a M1-1 zoning district. The
proposal is contrary to §42-00.

PREMISES AFFECTED – 25 Carroll Street, north side of
Carroll Street, 200' east of intersection with Van Brunt
Street, Block 347, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #6BK

69-07-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLP,
for 240 West Broadway, LLC, owner.

SUBJECT – Application March 23, 2007 – Variance (\$72-
21) to allow a nine (9) story residential building containing

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seven (7) dwelling units; contrary to use regulations (§42-10). M1-5 district (Area B-1 of Special TriBeca Mixed Use District).

PREMISES AFFECTED – 240 West Broadway, northwest corner of the intersection of North Moore Street and West Broadway, Block 190, Lot 44, Borough of Manhattan.

COMMUNITY BOARD #1M

112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalmam, owners.

SUBJECT – Application June 14, 2007 – Variance (§72-21) to permit the construction of a synagogue. The Premises is located in an R2 zoning district. The proposal is contrary to floor area ratio and lot coverage (§24-11), side yards (§24-35), rear yard (§24-36), wall height (§24-521) and parking (§25-31).

PREMISES AFFECTED – 1089-1093 East 21st Street, East 21st Street between Avenue I and Avenue J, Block 7585, Lots 21 & 22 (Tent. 21), Borough of Brooklyn.

COMMUNITY BOARD # 14BK

126-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Massachusetts Mutual Life Insurance Co., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application May 17, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on a portion of the ground floor, second floor mezzanine, and on part of the second floor in a 43-story residential building. The proposal is contrary to §32-00. C6-4 zoning district.

PREMISES AFFECTED – 555 West 42nd Street, north side of West 42nd Street, at 11th Avenue, Block 1071, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

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

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

SPECIAL ORDER CALENDAR

737-86-BZ

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

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

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

COMMUNITY BOARD #3SI

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 reopening and an extension of term for a period of twenty years for a previously granted variance for a retail store (UG 6) in an R3-2 zoning district, which expired on June 2, 2007 and for the addition of an outdoor canopy with picnic tables; and

WHEREAS, on January 23, 2007 the Staten Island Commissioner of the New York City Department of Buildings, acting on Application No. 500866020, issued objections, which stated:

The proposed continued use of the premises as a retail store (use group 6) in an R3-2 zoning district beyond June 2, 2007 is contrary to section ZR 22-00 and BSA calendar 737-86-BZ. Extension of the term of use will require a special permit from the Board of Standards and Appeals; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, Community Board 3, Staten Island, has recommended approval of this application for a term of ten years, with the following conditions: the term of the extension should be ten years; the curb cuts should be shortened for safer ingress and egress onto the property; plantings should be made

along the fence line behind and next to the residential neighbors' yards; a curb wall should be installed next door with rear yard drain to the drywell; the refrigerator next to the neighbor's fence and all illegal structures should be removed; and

WHEREAS, the site is located on the east side of Amboy Road between Buffalo Street and Hopkins Avenue; and

WHEREAS, the site is located in an R3-2 zoning district and is improved with a one-story retail food store, a canopy with picnic tables and parking for 11 vehicles; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1986 when, under BSA Cal. No. 737-86-BZ, the Board granted a variance under ZR § 72-21 to permit in an R3-2 district the legalization of a one-story retail store; and

WHEREAS, on February 3, 1998, under the subject calendar number, the Board amended the grant to limit the hours of operation and extend the term of the variance until June 2, 2007; and

WHEREAS, at hearing, the Board raised concerns about illegal signage, the presence of a seating area along the rear property line, and the condition of the fence at the rear property line; and

WHEREAS, in response to the comments of the Board and Community Board 3, the applicant has made or proposes to make certain changes at the premises, including: 1) reducing the size of the southern curb cut from 30 feet to 25 feet; 2) removing illegal signs and metal sign structures and ensuring that the premises complies with C-1 district signage requirements; 3) removing chairs and seats located along the rear property line; 4) limiting the hours of operation for the outdoor seating area to 7 a.m. to 7 p.m. Monday through Sunday; 5) replacing the fence along the property line; and 6) installing a new curb; and

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

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

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term 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 *reopens* and *amends* the resolution, as adopted on June 2, 1987, 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 2, 2007, to expire on June 2, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received February 9, 2007'-(1) sheet, 'April 12, 2007'-(2) sheets and 'June 12, 2007'-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 2, 2017;

THAT the hours of outdoor seating shall be limited to 7:00 am to 7:00 pm Monday through Sunday;

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

THAT all conditions from prior resolutions not

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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. 500866020)

Adopted by the Board of Standards and Appeals, July 10, 2007.

133-94-BZ

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

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

PREMISES AFFECTED – 166-11 Northern Boulevard, northwest corner of 167th Street, Block 5341, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

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, and a reopening to legalize a change in use from automobile repair, truck rental, and sale of used cars (Use Group 16) to car sales (Use Group 8), and to extend the term which expired on September 27, 2005 (the Board notes that the certificate of occupancy erroneously stated the expiration date as October 27, 2005); and

WHEREAS, a public hearing was held on this application on September 16, 2006, after due notice by publication in the *City Record*, with continued hearings on October 31, 2006, December 5, 2006, January 23, 2007, March 6, 2007, March 20, 2007, April 24, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, Community Board 7, Queens,

recommends disapproval of this application, citing concerns about the maintenance of the site, disruptions due to car washing, cars parked on the sidewalk, and an excessive numbers of cars being parked onsite; and

WHEREAS, the Queens Borough President and City Council Member Tony Avella recommend disapproval of this application, citing concerns that the site is not operated in compliance with the prior grants; and

WHEREAS, the Auburndale Improvement Association, the Station Road Civic Association, and certain neighbors recommend disapproval of this application, citing the same concerns as the Community Board; and

WHEREAS, the site is located on the northwest corner of Northern Boulevard and 167th Street, within a C1-2 (R2) zoning district; and

WHEREAS, the subject site has a total lot area of approximately 13,401 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,650 sq. ft. accessory building and a car sales area with parking for cars for sale and accessory customer parking; and

WHEREAS, the Board notes that the concerned elected officials and neighborhood associations have documented that the number of cars parked at the site exceeds the amount permitted under prior approvals; and

WHEREAS, on July 11, 1955, under BSA Cal. No. 281-54-BZ, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses at the site for a term of 15 years; and

WHEREAS, on May 14, 1968, under BSA Cal. No. 130-68-BZ, the Board granted an amendment to permit the enlargement of the accessory building; and

WHEREAS, the grant was subsequently extended for two terms of ten years; and

WHEREAS, on September 27, 1995, under the subject calendar number, the Board granted an amendment to legalize the change in use from a gasoline service station to an automobile and truck rental facility, limited to 15 cars and four trucks, with auto repairs and the sale of used cars limited to five; and

WHEREAS, the applicant now seeks to extend the term for a period of ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, as to the term, the Board notes that the request is for a legalization and has considered the testimony and evidence submitted into the record which reflects that the conditions and operation of the site are not in conformance with the prior grant; and

WHEREAS, accordingly, the Board has determined that a new ten-year term is not appropriate; and

WHEREAS, the applicant also proposes to legalize a change in the use at the site to the sale of more than five cars; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the Board notes that the change in use, from

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the gasoline service station with accessory uses (Use Group 16) permitted under the original variance to car sales (Use Group 8) is permitted pursuant to ZR § 11-413; and

WHEREAS, the applicant submitted several iterations of the site plan, which reflected different layouts for the cars for sale and variations of other site conditions; and

WHEREAS, at hearing, and in response to community members' concerns, the Board directed the applicant to address the following conditions: (1) signage must comply with C1 zoning district regulations; (2) the site is overcrowded and has an inefficient traffic flow; (3) parking of cars on the sidewalk is prohibited; (4) the fencing and landscaping around the site must be compatible with adjacent residential uses; and (5) any car washing must be controlled so as not to affect neighboring properties; and

WHEREAS, as to the signage, the applicant agreed to remove the sign on the fence and limit the signage to the building, which will comply with C1 zoning district regulations which permits 150 sq. ft. of signage for each frontage; the applicant proposes 150 sq. ft. of signage on the Northern Boulevard frontage; and

WHEREAS, as to the overcrowding at the site, although a prior iteration of the plans reflected parking for 41 cars, the applicant agreed to limit the number of cars to one car for each 200 sq. ft. of open space at the site and to provide the required 15 ft. aisle width; and

WHEREAS, specifically, the applicant agreed to designate five accessory parking spaces for customer parking at the northwest corner of the site and 33 spaces for cars for sale; and

WHEREAS, further, the applicant states that an employee of the car sales business would park and move the cars for sale; and

WHEREAS, as to the inappropriate parking of cars on the sidewalk and blocking driveways, the applicant has agreed to limit the number of cars at the site, which will eliminate the need to accommodate excess cars; and

WHEREAS, additionally, to improve the layout and traffic flow at the site, the applicant agreed to eliminate the two curb cuts at the corner of Northern Boulevard and 167th Street; and

WHEREAS, as to the fencing and landscaping, the applicant agreed to replace the existing pull down fencing on the Northern Boulevard frontage, with a brick wall of a height of 1'-6" in front of the new pull-down gate; the applicant also proposes to replace the fencing on the 167th Street frontage with a stepped low brick wall with wrought iron fence of a height of ten feet behind it in order to be more compatible with adjacent residential uses; and

WHEREAS, finally, the applicant agrees to provide opaque fencing along the rear property line adjacent to residential uses; and

WHEREAS, as to car washing, the applicant agreed to install an improved drainage system at the site to prevent any water from flowing onto adjacent sites; and

WHEREAS, additionally, during the hearing process, the

applicant removed the underground storage tanks and otherwise cleaned-up and eliminated the facilities associated with the abandoned auto repair use; and

WHEREAS, the applicant submitted a revised site plan, which reflected the noted modifications; and

WHEREAS, the Board agreed that the revised parking layout, the improved brick wall and fence design, and the removal of two curb cuts would improve the traffic circulation; and

WHEREAS, while the Board notes that the Community Board, City Council Member Avella, and the neighborhood associations do not approve of the proposed use of the site, the Board finds that with the noted modifications, such use is compatible with existing land uses in the area; and

WHEREAS, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and 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 under ZR §§ 11-411 and 11-413, to permit the legalization of a change in use to a car dealership and an extension of term for a period of two years from the date of this grant, to expire on July 10, 2009; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received June 25, 2007"-(5) sheets; and *on further condition*:

THAT this grant shall be for a term of two years, to expire on July 10, 2009;

THAT landscaping and fencing shall be installed and maintained as per the BSA-approved plans;

THAT the total number of cars parked at the site shall be limited to 38, which includes a minimum of five parking spaces for accessory customer parking;

THAT all exterior lighting shall be directed away from adjacent residential uses;

THAT all signage shall comply with C1 zoning district regulations;

THAT no signage shall be posted above the pull-down gates, as per the BSA-approved plans;

THAT the hours of operation shall be limited to Monday through Saturday, 10:00 a.m. to 8:00 p.m. and Sunday, 11:00 a.m. to 5:00 p.m.;

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

THAT construction shall be completed and a new certificate of occupancy obtained within six months of the date of this grant, by January 10, 2008;

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

THAT the parking layout shall be as approved by DOB;

THAT this approval is limited to the relief granted by the

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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, July 10, 2007.

149-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Brodcom West Development Company, owner; AGT Crunch, lessee. SUBJECT – Application January 12, 2007 – Extension of term/Amendment for a physical culture establishment in a C4-7 zoning district, including legalization of change in operating entity and amend the hours of operations.

PREMISES AFFECTED – 35/75 West End Avenue, northwest corner of West End Avenue and West 61st Street, Block 1171, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #7M

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, 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 special permit for a Physical Culture Establishment (PCE), which expired on July 29, 2006; and

WHEREAS, on December 29, 2006, the Manhattan Borough Commissioner of the Department of Buildings, acting on Application No. 104556945, issued objections, which stated:

“The physical cultural establishment is not permitted as-of-right in C4-7 zoning district and it is contrary to ZR 32-10”; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

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

WHEREAS, the subject premises is located on the northwest corner of West End Avenue and West 61st Street; and

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

WHEREAS, the site is located within a C4-7 zoning district, and is occupied by a 38-story mixed-use building; and

WHEREAS, the PCE occupies 1,749 sq ft. on the basement level and 14,016 sq. ft. on the first floor; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, on July 30, 1996, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the existing PCE in the basement and first floor of the subject building; and

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

WHEREAS, the applicant proposes minor changes in operating hours, but no other changes to the prior grant; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 30, 1996, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on July 30, 2016; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 17, 2007”–(6) sheets; and; 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 expire on July 30, 2016;

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) 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. 104556945)

Adopted by the Board of Standards and Appeals, July 10, 2007.

214-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner. SUBJECT – Application October 18, 2006 – Extension of Term/Extension of time to obtain a Certificate of Occupancy

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and Amendment of a Special Permit granted pursuant to §73-242 to permit within a C3 zoning district an eating and drinking establishment.

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

COMMUNITY BOARD #15BK

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, an amendment to legalize certain site modifications, and an extension of the term for a previously granted special permit for an eating and drinking establishment, which expired on March 26, 2007; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject premises is located on the northeast corner of Plumb Second Street and Harkness Avenue, within a C3 zoning district; and

WHEREAS, the site has frontage on the Shell Bank Creek; and

WHEREAS, the restaurant is operated as T.G.I. Friday's; and

WHEREAS, on May 27, 1980, under BSA Cal. No. 1233-79-BZ, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a two-story enlargement to an existing wholesale and retail fish-packing establishment; and

WHEREAS, on December 1, 1987, under BSA Cal. No. 233-86-BZ, the Board granted a special permit, pursuant to ZR § 73-242 to permit a one-story enlargement of the existing building and for a partial conversion of that portion of the building into an eating and drinking establishment, for a term of five years; the fish-packing establishment has been maintained in the portion of the building without frontage on Shell Bank Creek and is not subject to the special permit; and

WHEREAS, the special permit was subsequently extended for a term of five years; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board permitted the re-establishment of the special permit, for a term of five years to expire on March 26, 2007; and

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

WHEREAS, additionally, the applicant proposes to legalize modifications to the site, which include the addition of a cooler trailer and walk-in box, which are required by the New York City Department of Health and Mental Hygiene regulations, for use by the fish-packing and the eating and drinking establishments; and

WHEREAS, the floor area occupied by these structures has been included in the revised floor area calculations for the site, which the applicant represents comply with zoning district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and amendment 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 March 26, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of five years from the expiration of the last grant, to expire on March 26, 2012; to grant a nine-month extension of term to obtain a certificate of occupancy; and to permit the legalization of the noted site modifications; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received October 13, 2006”–(3) sheets and “May 30, 2007” – (2) sheets; and; and *on further condition*:

THAT this grant shall expire on March 26, 2012;

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

THAT a new Certificate of Occupancy shall be obtained by April 10, 2008;

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. 302221619)

Adopted by the Board of Standards and Appeals, July 10, 2007.

196-02-BZ, Vol. II

APPLICANT – Peter Hirshman, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application April 24, 2007 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy to a previously granted variance (ZR §72-21) for the addition of sleeping accommodations of 16 beds to an

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existing community facility (Dynamic Youth Community Inc.) in C8-2 zoning district.

PREMISES AFFECTED – 1826-32 Coney Island Avenue, west side of Coney Island Avenue, 46’ North of Avenue O, Block 6549, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

APPEARANCES –

For Applicant: Peter Hirshman.

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 time to complete construction of sleeping accommodations at an existing community facility building and to obtain a certificate of occupancy, which expired on November 19, 2006; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

WHEREAS, the application is brought on behalf of Dynamic Youth Community, Inc., a non-profit entity; and

WHEREAS, the subject premises is located on the west side of Coney Island Avenue, 46 feet North of Avenue O, within a C8-2 zoning district; and

WHEREAS, on November 19, 2002, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the addition of sleeping accommodations for 16 beds to an existing community facility building; and

WHEREAS, the grant was subsequently amended by letter dated June 4, 2003; and

WHEREAS, a condition of the grant was that work be completed within the time permitted by ZR § 72-23, which is four years from the date of the grant; and

WHEREAS, another condition of the grant was that a certificate of occupancy be obtained within two years of occupancy; and

WHEREAS, the applicant represents that construction was delayed as funding requirements were being met; and

WHEREAS, the applicant represents that the work has begun and is now 40 percent complete; and

WHEREAS, accordingly, the applicant requests a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that a three-year extension of time to complete construction and obtain a certificate of occupancy is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens,

and amends the resolution, dated November 19, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction and obtain a certificate of occupancy for a period of three years from the date of this grant; on condition that any and all work shall substantially conform to the approved drawings and on further condition:

THAT construction shall be complete and a certificate of occupancy obtained by July 10, 2010;

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. 301938312)

Adopted by the Board of Standards and Appeals, July 10, 2007.

41-05-A

APPLICANT – New York City Board of Standards and Appeals.

OWNER: United Homes (contract vendee).

SUBJECT – Application February 24, 2005 – To consider dismissal for lack of prosecution.

PREMISES AFFECTED – 140 Beach 25th Street, to be known as 120 Beach 25th Street, Block 15815, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Queens Borough Commissioner, dated February 4, 2005, acting on Department of Buildings Application Nos. 401992992, 401993009, 401993385, 401992983, 401992723, 401992714, 401992705, 401993312, 401992670, 401992689, 401992698, 401993394 read in pertinent part:

“Proposed development in the bed of a mapped street (Beach 25th Street) is contrary to General City Law Section 35 Subdivision 2”; and

WHEREAS, this is an application to permit, within an R6 zoning district within a Waterfront Area, the construction of ten three-family homes and two six-family homes within the bed of

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a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, the application was filed on February 24, 2005; and

WHEREAS, on June 28, 2005, the applicant indicated an intent to file an application with the City Planning Commission (CPC) for Waterfront Certification; the Board agreed to allow the applicant time to obtain CPC approval; and

WHEREAS, on July 22, 2005, at the request of Board staff, the applicant revised the site plan to reflect the footprint of the buildings in relationship to the mapped street; and

WHEREAS, on November 28, 2005, the Department of Environmental Protection stated that it had reviewed the revised site plan and had no objections; and

WHEREAS, on August 2, 2006, the applicant notified the Board that the development had been revised so that the proposed homes were no longer within the bed of the mapped street; additionally, the applicant stated that the CPC certification had been obtained; and

WHEREAS, accordingly, the applicant stated that the waiver of Section 35 of the General City Law was not required for the homes; and

WHEREAS, however, the applicant requested that the application be kept open in order to address the need to install drywells within the bed of the mapped street, which would require a waiver of Section 35 of the General City Law; and

WHEREAS, on February 21, 2007, Board staff sent a letter to the applicant requesting information on the status of the application; and

WHEREAS, the Board did not receive any response from the applicant; and

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

WHEREAS, on May 30, 2007, the Board sent the applicant a Notice of Hearing stating that the case had been put on the July 10, 2007 dismissal calendar; and

WHEREAS, the applicant did not respond to this notice; and

WHEREAS, because of the applicant's lack of prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 41-05-A is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 10, 2007.

196-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum Corp., owner.

SUBJECT – Application April 11, 2007 – Extension of Term/Time pursuant to (§11-411) to extend the term of the

previously granted variance permitting the operation of an automotive service station in an R6 zoning district. The application seeks an extension of time to obtain a certificate of occupancy and a waiver of the rules of practice and procedure to permit the filing of the application over one year prior to the expiration of term.

PREMISES AFFECTED – 2590 Bailey Avenue, located on the northeast corner of the intersection of Bailey Avenue and Heath Avenue, Block 3239, Lot 1, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 10 A.M., for continued hearing.

177-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 2025 Richmond Avenue LLC, owner.

SUBJECT – Application October 28, 2006 – Extension of Term and waiver of the rules for a Variance, granted on August 12, 1986 to permit in an R3-2 zoning district a two story building for use as a retail establishment and business offices (UG6) which does not conform with the use regulations.

PREMISES AFFECTED – 2025 Richmond Avenue, east side of Richmond Avenue, 894.75' north of Rockland Avenue, Block 2015, Lot 48, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for decision, hearing closed.

297-99-BZII

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

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

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

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

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ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for decision, hearing closed.

242-02-BZ

APPLICANT – Joseph Fullam, for Helen Fullam, owner.
SUBJECT – Application June 4, 2007 – Extension of Time to complete construction of a previously granted Variance (§72-21) in July 22, 2003 to construct a two family residence in an R3X/SR zoning district which expires on July 27, 2007.

PREMISES AFFECTED – 1 North Railroad Street, Annadale, west side of North Railroad, between Belfield Avenue and Burchard Court, Block 6274, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Fullam.

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 August 7, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

84-06-BZY

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

SUBJECT – Application May 4, 2006 – Proposed extension of time to complete construction minor development pursuant to ZR §11-331 for a four story mixed use building. Prior zoning was R6 and new zoning district is R4-1 as of April 5, 2006.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue N and Avenue O, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331, to renew a building permit and extend the time for the completion of the foundation for a two-story with attic mixed-use residential/community facility building; and

WHEREAS, this application was brought prior to a companion application under BSA Cal. No. 45-07-A, decided the date hereof, which is a request to the Board for a finding

that the owner of the premises has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that separate applications were filed and that the application under the subject calendar number was removed from the Board’s calendar on February 27, 2007, the date of the first hearing for the companion common law vested rights case, which was subsequently prosecuted at several hearings; the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on October 31, 2006, after due notice by publication in *The City Record*, with continued hearings on December 12, 2006, January 23, 2007 and February 27, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, certain neighbors and the Good Neighbors’ Association of Midwood, through counsel, appeared in opposition to the application (collectively the “Opposition”); and

WHEREAS, the site is located on the west side of East 19th Street, between Avenue N and Avenue O and it has a lot area of 3,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a two-story with attic mixed-use residential and community facility building, with 5,500 sq. ft. of floor area (1.49 FAR) and a height of 39’-2” (the “Building”); and

WHEREAS, the subject premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically for use, floor area, FAR (4.8 FAR was the maximum permitted for mixed-used residential and community facility buildings), height (there were not any height regulations), and setback; and

WHEREAS, however, on April 5, 2006 (the “Enactment Date”), the City Council voted to adopt the Midwood rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, because the site is now within an R4-1 district, the Building would not comply with the new zoning restrictions; and

The Validity of the Permits

WHEREAS, on December 8, 2005, the applicant professionally certified and obtained approval for a two-story with attic multiple-dwelling building with a community facility; and

WHEREAS, on February 28, 2006, DOB performed a special audit of the building plans, issued a stop work order (SWO), and ultimately issued a ten-day notice of intent to revoke the permit on March 6, 2006; and

WHEREAS, the applicant resolved the objections and obtained DOB’s approval on March 9, 2006 (the “Permit Date”) for Permit No. 302041261 (the “NB Permit”); and

WHEREAS, on March 29, 2006, the applicant filed a post-approval amendment (PAA) (“PAA Date”), which provided for a five-story building to be built at the site pursuant

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to the Quality Housing provisions; and

WHEREAS, the threshold issue is that any work performed in support of a vesting claim must be performed pursuant to a valid permit; and

WHEREAS, the validity of the permit under which the work was performed at the site has been called into question by the Opposition and by DOB; and

WHEREAS, as noted above, the PAA reflects a five-story building to be built pursuant to the Quality Housing provisions; and

WHEREAS, during the hearing process, DOB made a determination that Quality Housing provisions did not apply and that the plans associated with the PAA were non-complying even under the prior zoning; and

WHEREAS, accordingly, DOB determined that any work performed before March 9, 2006 or after March 28, 2006, could not meet the threshold requirement of work being performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that any work performed after March 28, 2006, cannot be considered for vesting purposes because the PAA plans would not have complied with the prior zoning and no permits could have been issued to permit the construction performed after that date; and

WHEREAS, at hearing, the Board stated that it would consider the work performed between March 9 and March 29, 2006 for vesting purposes because, despite several SWOs and other DOB objections to those plans, there was no incurable flaw in those plans for the original two-story with attic building that would make them inconsistent with the prior zoning under which the applicant proposes to vest; and

WHEREAS, however, the Board disregards the PAA and any work associated with it; and

WHEREAS, after the Enactment Date, DOB performed a special audit of the plans associated with the PAA under the regulations associated with the prior zoning and issued a ten-day notice of intent to revoke the permits on May 11, 2006; and

WHEREAS, DOB states that it did not receive a response from the applicant and revoked the permits on July 14, 2006; and

WHEREAS, the applicant claims that the notice of intent to revoke was never received; and

WHEREAS, furthermore, as noted, DOB determined that the PAA was not valid when issued because the Quality Housing provisions, upon which the initial plans were based do not apply to this site pursuant to ZR § 23-011(c)(3), which specifically excludes zoning lots with the characteristics of the subject lot and, on November 6, 2006, it revised its objections to reflect that the Quality Housing provisions were not applicable and that the plans associated with the PAA could not have complied with the R6 zoning district regulations; and DOB's Vesting Determination

WHEREAS, the applicant claims that when DOB inspected the site at the time of the rezoning, it gave a verbal determination that, as of the Enactment Date, the foundation had been poured and the site was therefore vested; and

WHEREAS, DOB states that because of the inspector's observation on April 6, 2006 that the foundation "appeared to be complete," DOB did not issue a SWO pursuant to the

rezoning; and

WHEREAS, subsequently, DOB received complaints that foundation work continued at the site and that it had not been complete at the Enactment Date; and

WHEREAS, DOB records show that because it could not gain access and get a full view of the site at the first inspection, the inspector could only observe that the foundation walls "appeared" to be in place and that no vesting determination was made by DOB; and

WHEREAS, DOB re-inspected the site on April 20, 2006 and witnessed foundation work being performed; DOB noted that due to backfilling, its inspector was unable to ascertain conclusively whether the foundation had been complete on the April 6, 2006 inspection and evidence submitted by the applicant in support of the vesting was contradictory; and

WHEREAS, accordingly, DOB subsequently issued a SWO; and

WHEREAS, as the result of the second inspection, DOB did not vest the work since it did not appear that the south foundation wall had been completed and that the presence of backfill at the first inspection precluded the inspector from seeing the entire site; and

WHEREAS, the applicant claims that the additional concrete was poured to repair a blowout to one of the foundation walls but DOB did not see any evidence to substantiate this claim at its second foundation inspection; and

WHEREAS, on April 27, 2006, DOB inspected the site a third time to investigate the applicant's claim that the additional concrete pouring was due to a blow-out on the south wall, but again did not find any evidence to support such a claim; and

WHEREAS, because the Building violated the provisions of the R4-1 zoning district and DOB ultimately determined that work on foundations was not completed on the Enactment Date, the NB Permit lapsed by operation of law; and Statutory Vesting Claim

WHEREAS, the applicant now applies to the Board to reinstate the NB Permit pursuant to ZR § 11-331; and

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

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Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

Excavation Work

WHEREAS, on February 28, 2006, DOB issued a SWO because it determined that excavation work was performed without permits and witnessed equipment for excavation activity on site; and

WHEREAS, the applicant claims that the noted excavation work was a result of demolition that was performed under a valid demolition permit; and

WHEREAS, the applicant claims that work completed prior to the PAA includes (1) shoring from March 14 (when a SWO was issued until a seismologist was hired) through March 22; and (2) lagging and excavation on March 23 and March 24 before another SWO was issued on March 27; and

WHEREAS, the applicant represents that lagging was completed on March 30, after the PAA went into effect and after the SWO was lifted; and

WHEREAS, accordingly, the Board is unable to conclude that excavation was completed between March 9 and March 29, 2006 because there is conflicting and inconclusive evidence in the record as to what work was performed under valid permits; and

Foundation Work

WHEREAS, as to the foundation, the applicant represents that form work was completed on April 3, 2006 and that concrete was poured on April 4, 2006; and

WHEREAS, as to substantial progress on the foundation, the applicant claims that 105 cubic yards of concrete, which represents the total amount of concrete initially proposed for the project, were poured for the foundation between the effective date of the PAA on March 29, 2006 and the Enactment Date on April 5, 2006; and

WHEREAS, the applicant admits that concrete was poured after the Enactment Date but claims that that was to repair blowouts and to make other repairs; and

WHEREAS, specifically, the applicant claims that 105 cubic yards of concrete were required for the foundations and that by the Enactment Date, 132 cubic yards had been poured; and

WHEREAS, at one point, the applicant stated that the additional 27 cubic yards associated with the purported repair work was poured before the Enactment Date and at another point, the applicant stated that the additional concrete was poured after the Enactment Date; and

WHEREAS, the Board notes that records from the concrete contractor submitted during the hearing process conflict with affidavits in the record that all concrete was poured by the Enactment Date; and

WHEREAS, the Board notes that, even if there were

conclusive evidence that the purported foundation work had been completed by the Enactment Date, due to the invalidity of the permits after the PAA Date, the PAA Date, rather than the Enactment Date, is the date on which the foundation work would have had to have been completed; and

WHEREAS, because any work performed after the PAA Date must be excluded from the analysis since the Board has determined that it was not performed pursuant to valid permits, only the lagging and shoring which was performed prior to the PAA Date has been considered; and

WHEREAS, the applicant has submitted photographs of the amount of work completed, which are not helpful because they reflect work performed both after the Enactment Date and while no valid permits were in effect; and

WHEREAS, the Board notes that substantial progress had not been made on primary elements of the foundation, including foundation forms and concrete pouring; and

Conclusion

WHEREAS, based upon the record before it, the Board is unable to conclude that excavation for the proposed development was complete or would have been completed prior to the PAA Date; and

WHEREAS, additionally, the Board has determined that substantial progress on the foundation had not been completed as of the PAA Date; and

WHEREAS, accordingly, because substantial progress had not been made on the foundation under lawfully issued permits, the applicant is not entitled to relief under ZR § 11-331; and

WHEREAS, however, the Board notes that the applicant has also filed the above-mentioned companion application, which requests a determination that the applicant has obtained a vested right under the common law to complete construction under the New Building permit; and

WHEREAS, accordingly, although the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331, this denial is not an impediment to the reinstatement of the permit made by the Board under BSA Cal. No. 45-07-A.

Therefore it is Resolved that this application to renew DOB Permit No. 302041261 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, July 10, 2007.

232-06-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Sunset Park, LLC, owner.

SUBJECT – Application September 11, 2006 – Proposed two family dwelling that does not front on a legally mapped street contrary to Article 3, Section 36 of the General City Law. R3-1 Zoning District.

PREMISES AFFECTED – 28 Sand Court, South side of Sand Court, 157 feet west of Father Capodanno Boulevard,

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Block 3122, Lot 213, Borough of Staten Island.

COMMUNITY BOARD #2SI

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 Staten Island Borough Commissioner, dated August 22, 2006, acting on Department of Buildings Application No. 500832735, reads in pertinent part:

“The street giving access to the proposed construction of a new residential building Use Group 2 in R3-1 Zoning District is not duly placed on the official map of the City of New York and therefore referred to the Board of Standards and Appeals for approval”; and

WHEREAS, a public hearing was held on this application on March 6, 2007 after due notice by publication in the *City Record*, then to continued hearings on April 10, 2007, May 8, 2007, and June 19, 2007, and to decision on July 10, 2007; and

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

WHEREAS, the application requested permission to build a two-story, two-family home that does not front on a final mapped street; and

WHEREAS, by letter dated February 27, 2007, the Fire Department stated that it had reviewed the application and informed the Board that the proposed home, situated on a 20’ wide easement and fronting on a 12’ wide alley, would pose a serious life hazard because the proposed frontage space for 28 Sand Court would be along the side of the house and would not allow the proper positioning of the engine or the ladder apparatus in the event of a fire; and

WHEREAS, the Fire Department also expressed concern about whether there would be a working hydrant in close proximity to the building; and

WHEREAS, the Fire Department concluded that, even with an automatic sprinkler system, fire safety in the house would be compromised; and

WHEREAS, by letter dated March 26, 2007 the applicant in response to the issues raised by the Fire Department indicated that the proposed building would be fully sprinklered, that a new fire hydrant would be installed in proximity to the two entries to the building, that a new circulation pattern would be created, and that paved areas would provide adequate access to the building; and

WHEREAS, by letter dated April 24, 2007 the applicant has submitted a revised site plan indicating the change in the

class of construction of the proposed home to Class IID, and an agreement by the adjacent property owner on Lot 177 to honor the amended terms of the easement declaration which allows for ingress and egress for the benefit of the owner for Lot 213 (the subject lot); and

WHEREAS, by letter dated April 30, 2007, the Fire Department stated that it had reviewed the applicant’s April 24, 2007 letter, that the conditions described in its February 24, 2007 letter remain unchanged and that the proposed structure would be inaccessible to Fire Department equipment; and

WHEREAS, by letter dated June 6, 2007 the applicant provided a revised Site Plan showing that the main entrance of the dwelling has been relocated so that it fronts directly on the 30-foot, widened portion of the Sand Court, and indicating that “No Parking”/Fire Lane Signs would be posted along the easement, and that the owner would take all required actions, including instituting legal proceedings, to ensure that the easement would remain unobstructed; and

WHEREAS, this condition will also be required to be listed on the Certificate of Occupancy for the subject premises; and

WHEREAS, the Board has taken into consideration the increased level of fire protection and construction and the site restrictions that are to be implemented; and

WHEREAS, based upon the above, the Board deems that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated August 22, 2007, acting on Department of Buildings Application No. 500832735, is modified by the power vested in the Board by Section 36 of the General City Law, and this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 6, 2007”-(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 main entrance of the residence fronts directly on the 30-foot widened portion of Sand Court;

THAT the subject property be fully sprinklered and be of a Class IID construction; and

THAT a new fire hydrant will be installed in proximity to the two entrances to the building; and

THAT there will be “NO PARKING/FIRE LANE” signs posted along the Sand Court easement; and

THAT the owner will take any and all required actions, including the commencement of formal legal proceedings, to insure that the Sand Court easement area is kept free and clear of automobiles and other obstructions at all times; and

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THAT the above conditions shall appear on the Certificate of Occupancy; 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, July 10, 2007.

37-07-A

APPLICANT – Cozen O’Connor Attorneys, for 56-50 Main Street Realty, LLC, owner.

SUBJECT – Application June 19, 2007 – Proposed construction of a Commerce Bank located within the bed of Booth Memorial Avenue contrary to General City Law Section 35. C1-3/R5B.

PREMISES AFFECTED – 56-50 through 56-56 Main Street, northwest corner of Main Street and Booth Memorial Avenue, Block 5133, Lots 10 & 25, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 22, 2007, and updated on February 6, 2007, acting on Department of Buildings Application No. 402527672 reads in pertinent part:

Proposed plan is located in the bed of mapped street is contrary to GCL Section 35. Refer to BSA; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in the *City Record*, and then to decision on July 10, 2007; and

WHEREAS, this application seeks to build a Commerce Bank (Use Group 6) within the bed of Booth Memorial Avenue, a mapped street; and

WHEREAS, by letter dated July 10, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 26, 2007, the Department of Environmental Protection (“DEP”) states that it has reviewed the application and has advised the Board that amended Drainage Plan No. 33 D.S. (13), 33 D.S.W. (7), 33c (11) calls for a future 15 foot diameter combined sewer in booth Memorial Avenue between Main Street and 139th Street, and will require a minimum 10-foot wide Corridor on each side of the 6” diameter water main in the widening portion of Booth Memorial Avenue between Main Street and 138th Street

for the purposes of maintenance and /or reconstruction of the existing 6” diameter city water Main; and WHEREAS, by the same letter DEP required a revised submittal from the applicant prior to further review; and

WHEREAS, by letter dated April 30, 2007, DEP required a further revised submittal from the applicant; and

WHEREAS, by letter dated July 6, 2007, DEP has reviewed the engineer’s July 2, 2007 Pressure Regulator Plan and finds it acceptable contingent upon a written agreement between the owner and DEP allowing DEP and /or any other party assigned by the DEP, access in perpetuity to the subject property for construction, reconstruction and maintenance of DEP infrastructure; and

WHEREAS, by letter dated May 10, 2007, the Department of Transportation (DOT) states that it has reviewed the application and has advised the Board that it has requested that the proposed left turn from northbound Main Street into parking lot be eliminated and also raised concerns regarding sufficient parking spots to accommodate the anticipated vehicular volume without vehicles queuing up in Main Street waiting for a parking spot; and

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

WHEREAS, by letter dated May 16, 2007, the applicant agrees to DOT’s conditions of eliminating the left hand turns into the site from the northbound lane. The applicant also states that with the proposed Main Street curb cut of 28 feet and the proposed drive-through tellers located approximately 100’ ft away from the Main Street entrance, there will be sufficient onsite space for car queuing; and

WHEREAS, by letter dated June 18, 2007, DOT states that it has reviewed the applicant’s submission and has no further objection or comments; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 22, 2007 and updated on February 6, 2007, acting on Department of Buildings Application No. 402527672, is modified by the power vested in the Board by Section 35 of the General City Law, 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 January 31, 2007”-(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 prior to construction applicant shall enter into an written agreement with DEP providing DEP and its assigns access to the premises in perpetuity for the purpose of construction, reconstruction and maintenance of DEP infrastructure;

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THAT all required DEP approvals are obtained prior to construction of the new building;

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, July 10, 2007.

45-07-A

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

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

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

COMMUNITY BOARD #14BK

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 appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a two-story with attic mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, this application was brought subsequent to a companion application under BSA Cal. No. 84-06-BZY, decided the date hereof, which is a request to the Board for a finding that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that separate applications were filed and that the application under the statutory vested rights case was removed from the Board’s calendar on February 27, 2007, the date of the first hearing for the subject common law vested rights case and that the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on February 27, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007 and May 22, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, certain neighbors and the Good Neighbors’

Association of Midwood, through counsel, appeared in opposition to the application (the “Opposition”); and

WHEREAS, the site is located on the west side of East 19th Street, between Avenue N and Avenue O and it has a lot area of 3,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a two-story with attic mixed-use residential and community facility building, with 5,500 sq. ft. of floor area (1.49 FAR) and a height of 39’-2” (the “Building”); and

WHEREAS, the subject premises is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to use, floor area, FAR (4.8 FAR was the maximum permitted for mixed-used residential and community facility buildings), height (there were not any height regulations), and setback; and

WHEREAS, however, on April 5, 2006 (the “Enactment Date”), the City Council voted to adopt the Midwood rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Building does not comply with the R4-1 zoning district parameters as to height, FAR, and floor area; and

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

WHEREAS, the validity of the permits under which the work was performed at the site has been called into question by the Opposition and by DOB; and

WHEREAS, on December 8, 2005, the applicant professionally certified plans for a two-story with attic multiple-dwelling building with a community facility; and

WHEREAS, on February 28, 2006, DOB performed a special audit of the building plans, issued a stop work order (SWO), and ultimately issued a ten-day notice of intent to revoke the permit on March 6, 2006; and

WHEREAS, the applicant resolved the objections and obtained DOB’s approval on March 9, 2006 (the “Permit Date”) for Permit No. 302041261 (the “NB Permit”); and

WHEREAS, work at the site continued pursuant to the NB Permit, with the exception of periods when SWOs were in effect, as discussed below, until March 29, 2006, when the applicant filed a post-approval amendment (PAA and “PAA Date”), which provided for a five-story building to be built at the site pursuant to the Quality Housing provisions; and

WHEREAS, the applicant concedes that, after the PAA Date, work was performed at the site pursuant to the plans associated with the PAA; and

WHEREAS, the Board notes that the applicant asserts that the work performed after the PAA Date could also be used for the two-story with attic building; and

WHEREAS, during the hearing process, DOB made a determination that Quality Housing provisions did not apply and that the plans associated with the PAA were non-complying even under the prior zoning; and

WHEREAS, accordingly, DOB determined that any work performed after March 28, 2006, could not meet the

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threshold requirement of work being performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that any work performed after March 28, 2006, cannot be considered for vesting purposes because the PAA plans were not valid since they would not have complied with the prior zoning and no permits could have been issued to permit the construction performed in furtherance of those plans; and

WHEREAS, at hearing, the Board stated that it would consider the work performed between March 9 and the PAA Date, when work was performed pursuant to DOB-approved plans; the Board disregards the PAA and any work associated with it because it does not meet the threshold for work performed pursuant to a lawfully issued permit; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the PAA Date, the owner had completed the following: demolition, some excavation and lagging, and seismic testing and shoring for adjacent properties; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed, work contracts, and copies of cancelled checks; and

WHEREAS, although the Board notes that the applicant also submitted pour tickets and affidavits from the architect and engineer documenting how much concrete was poured prior to the Enactment Date, the Board has not considered any of the concrete pouring as it took place after the PAA Date; and

WHEREAS, with respect to other periods of work stoppage, the Board notes that although the plans were self-certified on December 8, 2005, DOB audited them on February 28, 2006 and issued a SWO, which was not

resolved until March 9, 2006; and

WHEREAS, additionally, demolition work may have been performed prior to permitting and, on March 14, 2006, DOB issued a SWO for shoring work without a permit; and

WHEREAS, on March 15, 2006, a permit was issued for shoring; and

WHEREAS, because of the noted issues with the permit, the Board considers work only from the Permit Date and notes that work may have proceeded on several occasions for a short time without the appropriate permits; and

WHEREAS, further, the Board has not considered work performed after the PAA Date and up to the Enactment Date, contrary to the standard in vesting cases; and

WHEREAS, the Board recognizes that work was performed between the PAA Date and the Enactment Date, but has not considered it due to the failure to meet the threshold permit requirement during that period; and

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

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

WHEREAS, the Board has reviewed the cases cited in the Opposition's submissions, as well as other cases of which it is aware through its review of numerous vested rights applications, and disagrees with the Opposition as to the threshold issues for vesting cases; and

WHEREAS, specifically, the Board distinguishes the cases cited for the premise that a valid permit is required for vesting, because a valid permit was in effect in this case until the PAA Date; and

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

WHEREAS, specifically, the Board relies on Ageloff v. Young, 282 A.D. 707 (2d Dept. 1953) where the court found vested rights were established by staking, clearing, and excavating the site, and contracting for architectural services, and Hasco Electric Corp. v. Dassler, 144 N.Y.S.2d 857 (Sup. Ct. Westchester County 1955) where the court found vested rights were established by clearing trees and billboards in anticipation of construction work; and

WHEREAS, the Board notes that the courts in Ageloff and Hasco accepted site preparation work, the losses associated with it, and the expended soft costs to be sufficient to establish the right to vest under the common law; and

WHEREAS, in light of these cases, the Board has determined that the work performed at the site between March 9 and March 29, 2006, which includes demolition, some excavation, seismic monitoring, lagging, and shoring,

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can be characterized as substantial; and

WHEREAS, the Board also notes that the site preparation and excavation at the site occurred during the period when a valid permit was in effect; and

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

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

WHEREAS, the applicant states that the owner has already expended or become obligated for the expenditure of \$368,953 out of \$1,477,394 budgeted for the entire project; and

WHEREAS, thus, the expenditures up to the PAA Date represent approximately 25 percent of the total cost; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks and an accounting report; and

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

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

WHEREAS, the Board has considered the costs for the following: architectural services, demolition, excavation, shoring, lagging, other construction work, seismology services, test boring, surveying, and DOB fees; and

WHEREAS, the Board has not considered the cost for concrete pours, site supervision, and other expenditures for work performed after the PAA Date; and

WHEREAS, the Board notes that the Opposition disputes the amount paid for architectural services, claiming that it represents the costs for both building designs (the original plans for the two-story with attic building and the plans associated with the five-story building and the PAA), rather than one; and

WHEREAS, the Opposition has not provided any evidence to support this claim; and

WHEREAS, as to the serious loss finding, the applicant contends that the loss of \$358,953 associated with pre-PAA Date project costs that would result if vesting were not permitted is significant; and

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

WHEREAS, specifically, the applicant notes that the permissible floor area ratio would decrease from 1.49 FAR to 1.15 FAR (0.75 residential FAR and 0.40 community facility FAR) and accordingly, the 3,100 sq. ft. proposed for community facility space would be reduced to 1,500 sq. ft.; and

WHEREAS, the Board agrees that the need to redesign, coupled with \$358,953 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

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

WHEREAS, specifically, the Opposition contended that: (1) the vesting standard has not been met; (2) the PAA mooted the original plans; (3) the applicant has not acted in good faith during the process; (4) the applicant lacks credibility; and (5) not all of the purported expenditures are supported by evidence; and

WHEREAS, as to the vesting standard, the Board disagrees with the Opposition that the statutory vesting standard from ZR § 11-331 applies in a common law vesting case; as noted above, New York courts have set forth a separate set of criteria to be considered under the common law, which the Board has determined have been met in this case; and

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

WHEREAS, as to the amount of work performed, the Board reiterates that the degree of construction at the site was sufficient to meet the minimum requirements established by New York courts for such a finding; and

WHEREAS, as to the effect of the PAA, as noted above, the Board has determined that the work performed from March 9, 2006 to the PAA Date was performed pursuant to valid building permits and has not included work performed after the PAA in its vesting analysis; and

WHEREAS, as to the applicant's good faith and credibility, the Board examined all of the submitted evidence and considered the testimony at hearing, and determined that there was sufficient substantiated evidence to support the applicant's claims as to work completed, within the applicant's own submissions and evidence from DOB; and

WHEREAS, as to the expenditures, the Board has excluded any expenditures made after the PAA Date and has only accepted expenditures for the kinds of work New York courts have considered, as noted above; also, the Board has only accepted expenditures which are documented by cancelled checks from the owner; and

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

WHEREAS, as discussed above, the applicant states that the total anticipated cost of the project is \$1,447,394,

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including soft costs such as architectural costs, but not costs associated with the purchase; and

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

WHEREAS, while the Board was not persuaded by any of the Opposition's arguments, it nevertheless understands that the community worked diligently on the Midwood Rezoning and that the Building does not comply with the new R4-1 zoning parameters; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302041261, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 10, 2007.

86-07-A

APPLICANT – Sheldon Lobel, P.C., for Theresa Mazzone and Pietro Mazzone, owners.

SUBJECT – Application April 18, 2007 – Proposed construction of a two story, one family residence not fronting on a mapped street contrary to General City Law Section 36. R3-1 (SRD) Zoning District.

PREMISES AFFECTED – 64 Chatham Street, southeast corner of intersection of Kenilworth Avenue and Chatham Street, Block 5724, Lot 124, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Zara F. Fernandes.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough

Commissioner, dated March 21, 2007, acting on Department of Buildings Application No. 500901349, reads in pertinent part:

“The street giving access to the proposed construction of a new one family building Use Group 1 in R3-1 zoning district is not duly placed on the official map of the City of New York and therefore referred to Board of Standards and Appeals for approval”; and

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

WHEREAS, by letter dated June 11, 2007 the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated March 21, 2007, acting on Department of Buildings Application No. 500901349, 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 April 18, 2007” -(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, July 10, 2007.

70-06-A

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

SUBJECT – Application April 19, 2006 – Proposed construction of a two- story, three family dwelling located within the bed of mapped street (Zev Place) is contrary to General City Law Section 35. Premises is located within an R3-2 Zoning District.

PREMISES AFFECTED – 4 Rockwell Avenue, west of the intersection of Virginia Avenue and Rockwell Avenue, Block 2998, Lot 1(tent), Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

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87-06-A & 88-06-A

APPLICANT – Patrick W. Jones, P.C. for Zhen Hu, owner.
SUBJECT – Application May 8, 2006 – Proposal to permit construction of two, four story mixed use building within the bed of the mapped, unimproved Delong Street contrary to General City Law Section 35. Premise is located within a C4-2 Zoning District.

PREMISES AFFECTED – 131-04 & 131-06 40th Road, south side of 40th Road, 430' west of intersection with College Point Boulevard, Block 5060, Lot 70 & 71, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick W. Jones and Zhen Hu.

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 July 24, 2007, at 10 A.M., for decision, hearing closed.

170-06-A & 171-06-A

APPLICANT – Adam Rothkrug, Esq., for Ely Building LLC, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of two, three family homes located within the bed of a mapped but unbuilt street (Needham Avenue) contrary to Section 35 of General City Law. R5 Zoning District.

PREMISES AFFECTED – 3546 and 3548 Ely Avenue, north of Boston Road, Block 4892, Lots 24, 25, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

219-06-A thru 225-06-A

APPLICANT – Rothkrug, Rothkrug and Spector, for J. Berardi & C. Saffren, owners.

SUBJECT – Application August 30, 2006 – Application to permit the construction of seven two story one family dwellings within the bed of a mapped street (128th Drive) contrary to Section 35 of the General City Law and not fronting on a legally mapped street contrary to Article 3, Section 36 of the General City Law. Premises is located within the R-2 Zoning District.

PREMISES AFFECTED – 241-10/16/22/28/15/21/25 128th Drive, Block 12886, Lots 1003, 1005, 1007, 1009, 1004, 1006, 1008, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

326-06-A

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

SUBJECT – Application December 20, 2006 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the R1-2 district regulations in effect prior to the zoning text change on September 9, 2004. R1-2 zoning district.

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

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 10 A.M., for continued hearing.

50-07-A

APPLICANT – Gerald J. Caliendo, R.A., A.I.A., for Yosi Shem-tov, owner.

SUBJECT – Application February 22, 2007 – Construction of a five story three family dwelling (UG2) with ground floor community facility use (UG4) located within the bed of a mapped street (101st Street) contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 100-21 39th Avenue, northside of 39th Avenue, Block 1767, Lot 61, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 24, 2007, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 10, 2007
1:30 P.M.

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

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ZONING CALENDAR

43-06-BZ

CEQR #06-BSA-063Q

APPLICANT– Law Office of Fredrick A. Becker, for Emmanuel Charismatic Church, owner.

SUBJECT – Application March 13, 2006 – Zoning variance under §72-21 to allow a proposed house of worship to violate requirements for lot coverage (§24-11), front wall height (§24-521), front yard (§24-34), side yards (§24-35(a)), and accessory parking (§25-31). R5 district.

PREMISES AFFECTED – 31-09 35th Avenue, north side of 35th Avenue, 80’ 10” east of 31st Street, Block 608, Lots 3 and 4, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 denial of reconsideration by the Queens Borough Commissioner, dated February 13, 2006, acting on Department of Buildings Application No. 40228115, reads, in pertinent part:

1. Max lot coverage 55%
Proposed lot coverage 100% - not in compliance with ZR 24-11
2. Max height of front wall 35’ – Sky exposure plane 1:1
Proposed heights of front wall 40’ – sky exposure plane penetrated by 5’ vertically – not in compliance with ZR 24-521
3. Front yard required 10’
Proposed front yard 0’ – not in compliance with ZR 24-34
4. Side yards required 1 @ 8’
Proposed side yard 0’ – not in compliance with ZR 24-35a
5. Parking required 14 spaces (for “New Development”)
Parking provided 0 spaces – not in compliance with ZR 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, an enlarged three-story and cellar Use Group 4A house of worship, which does not comply with lot coverage, front wall height and sky exposure plane, front yard, side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35a and 24-31; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12,

2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 1, Queens, recommends approval of the application with the condition that an 8’ side yard be provided on the east side of the premises; and

WHEREAS, this application is being brought on behalf of Emmanuel Charismatic Church, a non-profit religious entity (the “Church”); and

WHEREAS, the subject premises is located on the north side of 35th Avenue, 80’-10” east of 31st Street, and is currently occupied by an existing one-story church and two small accessory buildings; and

WHEREAS, the proposal provides for an enlarged, 3-story church with the following parameters: 8,783 sq. ft. of floor area (9,018 sq. ft. is the maximum permitted); an FAR of 1.95 (2.0 FAR is the maximum permitted for a community facility), with Use Group 4A house of worship use space on the cellar level through third floor; 100% lot coverage (55% is permitted); a street wall of 40’- 0” (35’ is the maximum permitted); a front yard of 0’ – 0” (a front yard of 10’-0” is required); one side yard of 5’-0” at the second and third floors (8’-0” is required); no parking (14 parking spaces are required); and

WHEREAS, the proposed church will include the following: a coat room; bathrooms; a kitchen; a multi-purpose room that can be partitioned into classrooms for Sunday school and adult instruction; a main sanctuary occupying the first and second floors; and a third-floor with pastor’s office, church offices and permanent classrooms; and

WHEREAS, the applicant has revised its original proposal, which included no side yard, to incorporate a side yard of five feet at the second and third floors on the east side of the premises, which will reduce the capacity of the sanctuary from 320 to 302 persons, and reduce the number of classrooms on the third floor from five to four; and

WHEREAS, the applicant has also, in response to FDNY comments, revised the proposal to provide exit doors directly onto the street from both sides of the front of the Church; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Church: 1) to accommodate the congregation of approximately 150 families for services; 2) to have sufficient classroom space for Sunday school and adult instruction; and 3) to provide a pastor’s office, study rooms, adequate bathroom facilities, a social hall, kitchen and coatroom; and

WHEREAS, the existing church sanctuary cannot accommodate the current congregation for services; and

WHEREAS, the applicant states that the proposed amount of space in the 302-person-capacity sanctuary would minimally accommodate the congregation of 150 families for services; and

WHEREAS, the existing church lacks a pastor’s office and lacks study rooms and adequate bathroom facilities, social hall, kitchen and coatroom; and

WHEREAS, the existing church has insufficient

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classroom space and will not accommodate social gatherings after services; and

WHEREAS, the existing church is not handicapped-accessible; and

WHEREAS, the proposed church will be handicapped-accessible throughout the building; and

WHEREAS, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant notes that because of the limited size of the Site and the parking requirements imposed by ZR § 25-31, an as-of-right building could not utilize permitted floor area and could seat only 120 persons in the sanctuary; and

WHEREAS, the applicant further notes that an as-of-right building would not provide the additional rooms necessary to meet the Church's programmatic needs, thus necessitating the requested waivers; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Church, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that 50% of the congregation lives within the area, and for the rest of the congregation, a substantial amount of parking is available on Sundays on 31st Street; and

WHEREAS, the applicant also notes that the area is well-served by public transportation, with a stop for the N and W trains one block away, and a public bus line on 31st Street; and

WHEREAS, the applicant states that the immediate area is characterized by single and multi-family dwellings and nearby commercial and warehouse uses; and

WHEREAS, the applicant further states that the lack of a front yard is in character with nearby buildings; and

WHEREAS, the height of the proposed church building would not be out of scale with the 3-, 4- and 6-story buildings within the blockfront on 35th Avenue in the vicinity of the church; and

WHEREAS, at hearing, the Board expressed concern that the lack of a side yard would affect light and air for the adjacent residence; and

WHEREAS, as noted, in response to the Board's concerns, the applicant revised the proposal to provide a 5'-0" side yard at the second and third floors and to improve egress; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no as-of-right development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; 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. 06BSA063Q, dated March 13, 2006; and

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

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

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

Therefore it is Resolved that the Board of Standards and

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Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, a proposed three-story and cellar Use Group 4A house of worship, which does not comply with lot coverage, front wall/sky exposure plane, front yard, side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35a, and 24-31, *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 June 25, 2007" – eight (8) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: three stories, a street wall height of 40'-0", a lot coverage of 100 percent, and one side yard of 5'-0" at the second- and third-floor levels on the east lot line;

THAT the site, during construction and under regular operation, shall be maintained safe and free of debris;

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

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

THAT the 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, July 10, 2007.

98-06-BZ

CEQR #06-BSA-088Q

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

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 May 21, 2007 acting on Department of Buildings Application No. 402313493, reads, in pertinent part:

1. Proposed building exceeds the maximum floor area and FAR permitted by ZR 24-11.
2. Proposed building exceeds the maximum total height permitted by ZR 24-521.
3. Proposed building does not meet the minimum front yards requirements of ZR 24-34.
4. Proposed building does not meet the minimum side yard requirements of ZR 24-35.
5. Proposed building violates sky exposure plane and is contrary to ZR 24-521.
6. Proposed building does not meet the minimum side setback requirements of ZR 24-551.
7. Proposed building exceeds the maximum lot coverage permitted by ZR 24-11"; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, a public hearing was held on this application on February 13, 2007, after due notice by publication in *The City Record*, with continued hearings on March 20, 2007, May 8, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with the condition that a traffic study be completed to determine suitable improvements to surrounding streets (Dinsmore Avenue and Beach 9th Street) to mitigate any increase in vehicular traffic; and

WHEREAS, State Assemblywoman Audrey I. Pheffer provided testimony in support of this application; and

WHEREAS, State Senator Malcolm Smith provided testimony in support of this application; and

WHEREAS, the Board received additional testimony from neighbors citing concerns about the traffic impact; and

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity

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(the “Yeshiva”); and

WHEREAS, the Board notes that a companion application, under BSA Cal. No. 284-06-A, seeking a waiver of GCL Section 35 to permit a portion of the Yeshiva to be built within the bed of a mapped street, was brought concurrently and is addressed separately; and

WHEREAS, the subject premises is located on the southwest corner of Beach 9th Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the current proposal provides for a four-story and cellar synagogue with the following parameters: a street wall and total height of 46’-0”, 24,962 sq. ft. of floor area (20,000 sq. ft. is the maximum permitted); and an FAR of 2.49 (2.0 FAR is the maximum permitted for a community facility); and

WHEREAS, additionally, the applicant proposes 64 percent lot coverage (a maximum of 60 percent is permitted); one side yard of 8’-0” at the rear of the site along the western lot line and one side yard of 0’-1” at the southern side of the site (two side yards of 8’-0” each are the minimum required); and one front yard of 9’-10” along Beach 9th Street and one front yard of 13’-3” along Dinsmore Avenue (two front yards with a width of 15’-0” each are the minimum required); and

WHEREAS, the proposed building will include the following: (1) a gymnasium, dining area, and kitchen in the cellar; (2) a lobby, three classrooms, and office space on the first floor; (3) a medrash, four classrooms, and office space on the second floor; (4) a cahal, a library, four classrooms, and office space on the third floor; (5) a study hall and Judaic library, four classrooms, and office space on the fourth floor; and (6) a play area on the roof; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) to add a high school curriculum; (2) to provide additional classrooms and larger classrooms to relieve overcrowding and to better accommodate the current enrollment while allowing for future growth; (3) to provide a gymnasium and a kitchen; (4) to provide space designated for tutoring and other individual services; and (5) to provide separate prayer space; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant represents that a complying building would only be able to accommodate nine classrooms rather than the 15 proposed; and

WHEREAS, additionally, the proposed building will permit the Yeshiva to provide parallel classrooms and the addition of a high school curriculum; and

WHEREAS, the applicant represents that the current enrollment is 180 students and does not extend beyond eighth grade and that the anticipated enrollment in 2012, with the addition of the high school component, will be 300 students; and

WHEREAS, accordingly, the applicant requests the noted floor area and FAR in order to accommodate the projected enrollment; and

WHEREAS, the applicant states that the required floor area cannot be accommodated within the as-of-right lot coverage and yard parameters and allow for efficient floor plates that will accommodate the Yeshiva’s programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant represents that the requested yard, setback, and sky exposure plane waivers would enable the Yeshiva to develop the site with uniform floor plates, which are necessary to maximize efficiency of the building and the program; and

WHEREAS, the applicant represents that the floor-to-ceiling heights and classroom sizes are based on standards set for educational institutions; and

WHEREAS, in support of this assertion, the applicant submitted information on other yeshivas in the area which reflects these conditions; and

WHEREAS, the applicant represents that additional height is required to be able to meet classroom size guidelines, provide a viable gymnasium, and accommodate building infrastructure within the four floors and a cellar; and

WHEREAS, based upon the above, the Board finds that the limitations of the current overcrowded facility, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the Board notes that the immediate area is characterized by two-story single-family and two-family homes and, with several three- and four-story multiple dwelling buildings; and

WHEREAS, specifically, the adjacent property to the south on Beach 9th Street is a four-story multiple dwelling building; and

WHEREAS, at hearing, the Board asked the applicant to reduce the building height from the initially-proposed 51 feet; and

WHEREAS, specifically, the Board directed the applicant to lower the first floor to grade, rather than having it raised three feet above grade; and

WHEREAS, the Board noted that since the cellar is built to the lot line, in the earlier design with the raised first floor, the

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upper three feet of the cellar were visible and formed an extended platform at certain portions of the site; and

WHEREAS, in response, the applicant lowered the cellar level deeper into the ground and reduced the floor to ceiling heights from 12'-0" to 11'-6" to result in the first floor being at grade and a total building height of 46 feet; and

WHEREAS, the applicant represents that the building height cannot be reduced any further and still accommodate the standard floor to ceiling heights and the required height for the gymnasium at the cellar level; and

WHEREAS, as to the Community Board's request for a traffic study, the Department of Transportation's School Safety Engineering Office reviewed the application and surveyed the area and, by letter dated March 7, 2007, states that it has no objection to the proposed use at this location; and

WHEREAS, the applicant represents that there will be three school buses which will pickup and drop off on Beach 9th Street, a wide road; and

WHEREAS, additionally, the applicant has agreed to provide a uniform sidewalk with a width of 10'-0" around the perimeter of the site in an effort to help improve visibility and allow more room for drop-offs and circulation around the site; and

WHEREAS, accordingly, the Board finds that this action will neither 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 Yeshiva could occur on the existing lot; and

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

WHEREAS, at hearing, the Board asked the applicant to explain the need for an additional 5,000 sq. ft. of floor area (0.49 FAR) beyond what is permitted under zoning district regulations; and

WHEREAS, specifically, the Board asked the applicant whether the program could be accommodated within the as of right 2.0 FAR, with the remaining requested waivers; and

WHEREAS, the applicant responded that the floor area had been calculated based on the needs for the projected enrollment and that the additional FAR would accommodate 312 students, while the as of right scenario could only accommodate 244 students, or up to seventh grade; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Yeshiva the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; 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. 06BSA088Q, dated May 13, 2006; and

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

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

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

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, 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 R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 24, 2007" – six (6) sheets "Received May 22, 2007" – six (6) sheets; and *on further condition*:

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the building parameters shall be: four stories; a floor area of 24,692 sq. ft. (2.49 FAR); a street wall and total height of 46'-0", without bulkheads; a lot coverage of 64 percent; one front yard of 9'-10" along Beach 9th Street and one front yard of 13'-3" along Dinsmore Avenue; and one side yard of 8'-0" at the rear of the site along the western lot line and one side yard of 0'-1" at the southern side of the site;

THAT any and all lighting shall be directed downward and away from adjacent residences;

THAT rooftop mechanicals shall comply with all applicable Building Code and other legal requirements, including noise guidelines, as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the

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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, July 10, 2007.

284-06-A

APPLICANT – Eric Palatnik, P.C., for Siach Yitzchok, owner.

SUBJECT – Applications May 16, 2006 and October 25, 2006 – Variance (§72-21) to permit, in a R4A zoning district, a four (4)-story yeshiva, which is contrary to floor area (§24-11); total height (§24-521); front yard (§24-34); side yard (§24-35); sky exposure plane (§24-521); setback requirements (§24-521); and level of yards (§24-531). Proposed construction of a four story yeshiva (Siam Yitzchok) that lies within the bed of a mapped street Beach 9th Street which is contrary to Section 35 of the General City Law Section 35. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9th Street, southwest corner of the intersection of Beach 9th Street and Dinsmore Avenue, Block 15554, Lots 49 and 51, Borough of Queens.

COMMUNITY BOARD #14Q

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 Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402313493, reads in pertinent part:

“Proposed development which rest partially within the bed of a mapped street requires approval form the NYC BSA pursuant to General City Law Section 35”; and

WHEREAS, a public hearing was held on this application on February 13, 2007 after due notice by publication in the *City Record*, with continued hearings on March 20, 2007, May 8, 2007, and June 5, 2007, and then to decision on July 10, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, the Board notes that a companion

application has been filed, under BSA Cal. No. 98-06-BZ for a variance pursuant to ZR § 72-21, to permit on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, by letter dated May 7, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated January 18, 2007, the Department of Environmental Protection states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated March 22, 2007, the Department of Transportation (DOT) stated that it has reviewed the application and advised the Board that it would require the applicant to provide for a “full width” sidewalk with a minimum width of ten feet, free of any obstructions, for the entire length of the property on the south side of Dinsmore Avenue; and

WHEREAS, the Board notes that the March 22, 2007 letter did not indicate that DOT intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, by letter May 22, 2007, in response to DOT’s request, the applicant submitted a revised plot plan and statement reflecting a proposed ten-foot sidewalk with curb for the full length of the property along the south side of Dinsmore Avenue; and

WHEREAS, by letter dated June 19, 2007, DOT states that it has reviewed the applicant’s revised submission and has no further comments or objections; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated October 4, 2006, acting on Department of Buildings Application No. 402313493, 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 May 22, 2007 (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, July 10, 2007.

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131-06-BZ

CEQR #06-BSA-101R

APPLICANT – Papa Architects, for Beach-Land Realty, owner.

SUBJECT – Application June 23, 2006 – Special Permit pursuant to Z.R. §73-36 to permit the legalization of an existing Physical Culture Establishment in a one-story portion of the existing building. The Premise is located in a C4-2 zoning district. The proposal is contrary to Z.R. §32-10.

PREMISES AFFECTED – 146 New Dorp Lane, a/k/a 146-154 New Dorp Lane, Block 4209, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2 SI

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 Staten Island Borough Commissioner, dated June 13, 2007, acting on Department of Buildings Application No. 500770285, reads in pertinent part:

“Proposed physical culture establishment in a C2-2 zoning district, is contrary to Section 32-10 ZR and requires a special permit from the Board of Standards and Appeals, pursuant to Section 73-36 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 zoning district, the legalization of a physical culture establishment (PCE) in a one-story portion of a two-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on June 12, 2007 after due notice by publication in *The City Record*, and then to decision on July 10, 2007; and

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

WHEREAS, Community Board 2, Staten Island, recommends approval of this application on the condition that the approved use be limited to a PCE and that it not be converted to a Use Group 9 use; and

WHEREAS, the subject site is located at the southwest corner of New Dorp Lane and 8th Street, within a C2-1 zoning district; and

WHEREAS, the site is the subject of a prior grant, under BSA Cal. No. 489-80-A, which permitted the conversion of the second floor of the frame building from residential use to office use, with the installation of appropriate fire safety measures; and

WHEREAS, the PCE occupies approximately 2,992 sq. ft. of floor area on the first floor of the subject building; and

WHEREAS, the applicant represents that the PCE offers facilities and equipment for aerobics, weight-training, and cardio-vascular exercise; and

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

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

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

WHEREAS, the PCE does 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. 06BSA101R, dated June 12, 2007; and

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

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

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

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

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73-03, to permit, on a site within a C2-2 zoning district, the legalization of a physical culture establishment in a one-story portion of a two-story commercial building, contrary to ZR § 32-00, for a term of ten years to expire on July 10, 2017; *on condition* that all work shall substantially conform to drawings filed with this application marked “June 26, 2007”- (2) sheets and *on further condition*:

THAT the term of this grant shall expire on July 10, 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 any massages shall be performed by New York State licensed massage therapists;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, July 10, 2007.

261-06-BZ

CEQR #07-BSA-020K

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

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

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

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinsemith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 4, 2006, acting on Department of Buildings Application No. 302084571, reads, in pertinent part:

“Proposed Yeshiva and accessory synagogue in an M1-2 zoning district is contrary to ZR 42-10 and must be referred to the BSA for approval”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-2 zoning district, the construction of a five-story Yeshiva and accessory synagogue, which is contrary to ZR § 42-10; and

WHEREAS, the application is brought on behalf of Congregation Mazah (the “Congregation”), a nonprofit religious institution; and

WHEREAS, a public hearing was held on this application on April 24, 2007 after due notice by publication in the *City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

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

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

WHEREAS, the site is located on the east side of Union Avenue, between Lorimer Street and Harrison Avenue in the Williamsburg section of Brooklyn; and

WHEREAS, the subject site is a roughly triangular, approximately 6,800 sq. ft. vacant zoning lot; and

WHEREAS, the Site is located in an M1-2 zoning district; and

WHEREAS, the applicant proposes to construct a cellar and five-story Yeshiva (UG 3A) with accessory synagogue (UG 3A), with a floor area of 28,590 sq. ft. and F.A.R. of 4.2, with a height of 72’; and

WHEREAS, the building’s cellar will include a Mikvah, an office, restrooms, storage space and mechanical rooms; and

WHEREAS, the building’s first floor will contain the accessory synagogue, which will be used by students during the week and by members of the Congregation on weekends, along with office space, restrooms and coatrooms; and

WHEREAS, the building’s second floor will contain the cafeteria, meat and dairy kitchens and a teachers’ lounge; and

WHEREAS, the building’s third floor will contain a Hebrew library and offices; and

WHEREAS, the building’s fourth and fifth floors will contain classrooms, offices and a Medrash, or large study hall; and

WHEREAS, the maximum allowable F.A.R. in the M1-2 district is 4.8 for community facility buildings or buildings used partly for community facility uses; and

WHEREAS, the maximum height permitted under ZR § 43-43 is 60’; and

WHEREAS, the applicant represents that except for its height, the proposed Yeshiva meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M-1 zoning district; and

WHEREAS, an intermediate school is located on the

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opposite corner across Union Avenue from the Site pursuant to a special permit under ZR § 73-19 granted by the Board under Calendar No. 566-65-BZ and three additional schools are located within ¼ mile of the Site; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Congregation, which includes its mission to provide a school for religious and secular education to benefit members of the surrounding Orthodox Jewish community; and

WHEREAS, the Applicant represented at hearing that the Congregation has outgrown its existing building, which is located to the north of the Site; and

WHEREAS, the proposed building will allow the Congregation to offer secular and religious education for 150 to 180 male students from 13 to 20 years of age; and

WHEREAS, specifically, the Applicant states that the following are the programmatic needs of the Congregation, which necessitate the requested variance: (1) that the Congregation has outgrown its current facility, and (2) that the number of stories and height of the proposed Yeshiva are necessitated by the need to provide all of the uses proposed to be accommodated in the building; and

WHEREAS, the applicant represents that the size and irregular shape of the Site create inefficient floor plates and do not permit the accommodation of all necessary functions in a building that complies with the height limitation set forth by ZR § 43-43; and

WHEREAS, the applicant further represents that there are no available sites near the current location of the Congregation's facility where construction of the Yeshiva would be feasible; and

WHEREAS, the Board questioned, at hearing, whether the proposed ceiling heights in excess of 12 feet for the first-floor accessory synagogue and the for fifth-floor Medrash resulting in a total height of seventy-two feet (as opposed to the sixty feet that would be permitted to accommodate five stories) for the proposed building were required for the Yeshiva's programmatic needs; and

WHEREAS, in response the applicant submitted documentation as to the need for the proposed ceiling heights, along with a survey showing that the proposed ceiling heights are consistent with those of other Yeshivas and synagogues in the area surrounding the site; and

WHEREAS, the Board finds that the ceiling heights proposed for the building are necessary to serve the programmatic needs of the Congregation, and agrees that the construction of a Yeshiva with accessory synagogue in close proximity to the Congregation's existing location is necessary to address the Congregation's needs; and

WHEREAS, the Board acknowledges that the Congregation, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference unless it can be shown to have an adverse effect upon the health, safety,

or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

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

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

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

WHEREAS, specifically, the applicant represents that adjacent sites are developed with seven-story buildings that are 73 feet tall; and

WHEREAS, the applicant further represents that the surrounding area is developed with large multi-family residential buildings; and

WHEREAS, the applicant submitted photographic documentation in support of the proposed Yeshiva's consistency with the character of the neighborhood; and

WHEREAS, the Board agrees that the proposed five-story building is compatible with the surrounding residential area with respect to both use and bulk; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood or 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 is inherent in the shape of the Site, which renders it unsuitable for as-of-right development; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA020K, dated November 6, 2006; and

WHEREAS, the EAS documents that the project as

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

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: November 6, 2006 EAS and the August 29, 2006 Phase I Environmental Site Assessment Report;

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials and Air Quality; and

WHEREAS, a DEP Restrictive Declaration (the "DEP RD") was executed on March 6, 2007 and submitted for proof of recording on March 21, 2007 and requires that hazardous materials concerns be addressed; and

WHEREAS, DEP has determined that there would not be any impacts from the subject proposal, based on the implementation of the measures cited in the DEP RD and the applicant's agreement to the conditions noted below; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, 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 application under ZR § 72-21 to permit, within an M1-2 zoning district, the construction of a five-story Yeshiva with accessory synagogue, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 12, 2007" - twelve (12) sheets and "Received June 27, 2007" - two (2) sheets; and *on further condition*:

THAT the proposed Yeshiva shall have an FAR of 4.2 and a street wall height of 72' - 0"; and

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, July 10, 2007.

322-06-BZ

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

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

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

COMMUNITY BOARD #12Q

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 Queens Borough Commissioner, dated November 20, 2006, acting on Department of Buildings Application No. 402428627, reads in pertinent part:

"Proposed two side yards with a width of 3'-6" on each side are contrary to ZR 23-48 (Special provisions for existing narrow zoning lots)"; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story, two-family home that does not provide the required side yards for an existing narrow lot, contrary to ZR § 23-48; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in *The City Record*, with continued hearing on July 10, 2007, and then to decision on July 10, 2007; and

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

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the east side of 142nd Place, between 119th Road and Foch Boulevard, within an R3-2 zoning district; and

WHEREAS, the site has a width of approximately 22 feet, a depth of approximately 101.5 feet, and a total lot area of approximately 2,230 sq. ft.; and

WHEREAS, the applicant represents that the site has existed in its current configuration since before December 15, 1961; and

WHEREAS, the site is currently vacant; records indicate that a home was demolished, due to unsafe conditions, in May

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2004; and

WHEREAS, the applicant proposes to construct a two-story two-family home with two off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 1,337.6 sq. ft. of floor area (0.59 FAR), a wall height of 20.04 feet, a total height of 23.05 feet, a front yard of 35 feet, one parking space in the driveway, and one parking space in the cellar level garage; and

WHEREAS, however, the applicant proposes to provide one side yard of 3'-0" and one side yard of 4'-0" (two side yards of 5'-0" each are the minimum required); and

WHEREAS, the applicant states that side yard relief is necessary, due to the narrow width of the lot; and

WHEREAS, the applicant states that the narrowness of the lot is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations; and

WHEREAS, the applicant represents that the subject lot is one of only three vacant lots wholly within the 400-ft. radius; and

WHEREAS, the applicant has submitted a 400-ft. radius diagram that supports this assertion; and

WHEREAS, the applicant represents that the requested side yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing dimensions of the lot - 22 ft. wide and 101.5 ft. deep - cannot feasibly accommodate as of right development; and

WHEREAS, in support of this statement, the applicant submitted plans for a complying building, which reflects an exterior building width of only 12'-0" if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant initially proposed to provide two side yards with widths of 3'-6" each; and

WHEREAS, at hearing, the Board suggested that the applicant increase the side yard on the northern property line to 4'-0" to be more compatible with the adjacent yard conditions; and

WHEREAS, the applicant represents that there is a context for narrow lots and non-complying yards within the immediate area; and

WHEREAS, the Board notes that housing in the area is predominantly two-story, two-family homes, similar to the one proposed; and

WHEREAS, additionally, the Board notes that because the proposed home provides a 35'-0" front yard and is set back from the front of the adjacent homes, the impact of the new building on the adjacent homes' side windows is minimized; and

WHEREAS, the Board agrees that the non-complying side yards are compatible with the neighborhood context; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historical lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R3-2 zoning district regulations except for side yards; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story two-family home that does not provide the required side yards for an existing narrow lot, contrary to ZR § 23-48; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 10, 2007" - (9) sheets and "May 31, 2007" - (2) sheet ; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: two stories, 1,337.6 sq. ft. of floor area (0.59 FAR), a wall height of 20.04 feet, a total height of 23.05 feet, one side yard with a width of 3'-0" and one side yard with a width of 4'-0", and two off-street parking spaces; and

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

THAT off-street parking shall be as reviewed and approved by DOB;

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

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

THAT the Department of Buildings must ensure 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.

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Adopted by the Board of Standards and Appeals, July 10, 2007.

32-07-BZ

CEQR #07-BSA-056Q

APPLICANT– Omnipoint Communications Inc., for E.C. Hassell Inc., owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application January 24, 2007 – Special Permit §73-30 and §22-21 – In an R3-2 zoning district, for a non-accessory radio tower for a public utility wireless communications facility and consist of a 62-ft. stealth flagpole (gold ball on top), together with antennas mounted and equipment cabinets on roof of nearby commercial building.

PREMISES AFFECTED – 146-10/16 Guy R. Brewer Boulevard, 240' south of the intersection of Guy R. Brewer Boulevard and Farmers Boulevard, Block 13310, Lots 69 & 70, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Robert Bandioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner of the New York City Department of Buildings, dated January 17, 2007, acting on Department of Buildings Application No. 402459040, states:

“Telecommunications Tower may be filed at the Board of Standards and Appeals as per ZR 73-30, other bulk regulation and TPPN 5/98 are not applicable since there is no use group for non-accessory radio towers”; and

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

WHEREAS a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2007, and then to decision on July 10, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan; and

WHEREAS, Queens Community Board No. 13 recommends disapproval of this application; and

WHEREAS, the applicant represents that the proposed facility will remedy a significant gap in wireless service in Queens; and

WHEREAS, the proposed stealth monopole will be located at 146-10/146-16 Guy R. Brewer Boulevard between Farmers Boulevard and 146th Drive; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a stealth monopole with a maximum height of 62 feet; and

WHEREAS, the proposed stealth monopole has been designed to resemble a flagpole equipped with an American flag and decorative gold ball; and

WHEREAS, all antennae and cables will be hidden within the stealth monopole; and

WHEREAS, three related equipment cabinets will be located on the roof of an existing one-story commercial building located adjacent to the proposed monopole; and

WHEREAS, at the Board’s suggestion, the applicant will construct a screen around the three rooftop equipment cabinets to shield them from view; and

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

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

WHEREAS, the applicant also states that the related equipment cabinets will be concealed behind a screen; and

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

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

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

WHEREAS, the Board further finds that the subject use will neither alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

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

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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. 07-BSA-056Q, dated January 24, 2007; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit, within an R3-2 zoning district, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 21, 2007"- (5) sheets; and *on further condition*;

THAT stealth monopole, flag and screen for the equipment cabinets will be maintained in accordance with BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, July 10, 2007.

23-06-BZ

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

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

PREMISES AFFECTED – 150-62 78th Road, southwest corner of 153rd Street and 78th Road, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

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 §§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

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

48-06-BZ

APPLICANT – Jack A. Adesso, PLLC, for 420 Morris Park Avenue, LLC, owner.

SUBJECT – Application March 17, 2006 – Zoning variance under §72-21 to allow an eight (8) story residential building containing seventy (70) dwelling units and seventeen (17) accessory parking spaces in an M1-1 district. Proposal is contrary to use regulations (§42-00).

PREMISES AFFECTED – 420 Morris Park Avenue, southwest corner of East Tremont Avenue and Morris Park Avenue, Block 3909, Lot 61, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES – None.

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

103-06-BZ

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

116-06-BZ

APPLICANT – Harold Weinberg, P.E., for David Nikchemny, owner.

SUBJECT – Application June 8, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§34-47) in an R3-1 zoning district.

PREMISES AFFECTED – 172 Norfolk Street, west side, 200' north of Oriental Boulevard and Shore Boulevards,

MINUTES

Block 8756, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto III.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

156-06-BZ

APPLICANT – Alfonso Duarte, for Ally Basheer, owner.
SUBJECT – Application July 13, 2006 – Variance (§72-21) for the legalization to a single family home for the enlargement on the second floor which does not comply with front yard (§23-45) zoning requirements in an R-2 zoning district.

PREMISES AFFECTED – 267-04 83rd Avenue, southeast corner of 267th Street, Block 8779, Lot 41, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: None.

ACTION OF THE BOARD – Laid over to August 21, 2007, at 1:30 P.M., for continued hearing.

161-06-BZ

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

SUBJECT – Application July 24, 2006 – Variance (§72-21) on behalf of the Doe Fund to permit the creation of two (2), eight (8)-story structures at the Premises located in a C8-2 zoning district. The proposal is contrary to Section 32-10.
PREMISES AFFECTED – 3349 and 3365 Webster Avenue, Webster Avenue South of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 14, 2007, at 1:30 P.M., for continued hearing.

212-06-BZ

APPLICANT – Jeffrey A. Chester, for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application August 22, 2006 – Variance (§72-21) to convert an existing supermarket (Use Group 6) into an electronics store with no limitation in floor area (Use Group 10). The Premises is located in an R4 zoning district. The proposal is contrary to §22-10.

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

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester, Robert Pauls, Georges Jacquemart and Rudy Klofsman.

For Opposition: David Weprin, Council Member, Anna Levine, Rosemarie Guidice, Dave Kerper and Roberta Lernet.

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

254-06-BZ

APPLICANT – Eric Palatnik, P.C., for Sarah Weiss, owner.
SUBJECT – Application September 18, 2006 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141(a)) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1327 East 21st Street, corner of Avenue L and East 21st Street, Block 7639, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Off calendar without date.

264-06-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to August 7, 2007, at 1:30 P.M., for continued hearing.

333-06-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Alfred Caligiuri, owner.

SUBJECT – Application December 29, 2006 – Variance (§72-21) to permit the enlargement of an existing two family dwelling in an R2A zoning district which complies with the districts bulk and yard requirements but does not permit two family dwellings.

PREMISES AFFECTED – 29-26 Bell Boulevard, Bell Boulevard and 32nd Avenue, Block 6053, Lot 34, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

MINUTES

For Applicant: Joseph Morsellino.
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 July 24,
2007, at 1:30 P.M., for decision, hearing closed.

43-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for
Covenant House, owner; Hampshire House Hotels &
Resorts, lessee.

SUBJECT – Application February 8, 2007 – Zoning
variance under §72-21 to allow a proposed twelve (12) story
mixed-use development containing seventy-four (74)
apartment hotel rooms (U.G. 2), two-hundred and seventy
(270) transient hotel rooms (U.G. 5) and retail use (U.G. 6)
and/or a physical culture establishment (PCE) on the ground
and cellar levels. Proposed commercial uses (transient hotel,
retail and PCE) are contrary to use regulations (§22-00).
Proposed apartment hotel rooms exceed maximum number
of dwelling units (§23-22) and are contrary to recreation
requirements of the Quality Housing Program (§28-32).
Proposed development would also violate regulations for
floor area (§23-145), lot coverage (§23-145), rear yard for
interior portion of lot (§23-47), rear yard equivalent for
through lot portion (§23-533), height and setback (§23-633),
and location requirements for outdoor swimming pool (§12-
10).

PREMISES AFFECTED – 346-360 West 17th Street, a/k/a
351-355 West 16th Street, Block 740, Lot 55, Borough of
Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Paul Selver and Frank Fusaro.

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 July 24,
2007, at 1:30 P.M., for decision, hearing closed.

117-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for
Rosebud Associates, LLC, owner.

SUBJECT – Application May 10, 2007 – Special Permit
(§73-36) to allow the operation of the proposed PCE on a
portion of the first floor and the second floor in vacant space
in an existing 21-story mixed-use building. The Premises is
located in a C1-9A "TA" zoning district. The proposal is
contrary to section 32-00.

PREMISES AFFECTED – 222 East 34th Street, south side
of East 34th Street, between Second and Third Avenues,
Block 914, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen May.

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 July 24,
2007, at 1:30 P.M., for decision, hearing closed.

120-07-BZ

APPLICANT – Bryan Cave LLP, for Fiam Building
Associates, owner.

SUBJECT – Application May 11, 2007 – Zoning variance
under § 72-21 to allow the partial conversion to residential
use of an existing 12-story mixed-use building; contrary to
use regulations (§ 42-00). M1-6 district.

PREMISES AFFECTED – 24 West 30th Street, south side,
350' to the west of Fifth Avenue, Block 831, Lot 53,
Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter, Sam Stein, Jack
Freeman and Darrenmann.

ACTION OF THE BOARD – Laid over to August
14, 2007, at 1:30 P.M., for continued hearing.

128-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Sharon Perlstein and Sheldon Perlstein, owners.

SUBJECT – Application May 18, 2007 – Special Permit
(§73-622) for the enlargement of an existing single family
residence. This application seeks to vary open space and
floor area (23-141); less than the minimum side yards (§23-
461 and §23-48) and rear yard (§23-47) in an R-2 zoning
district.

PREMISES AFFECTED – 1382 East 26th Street, west side
of East 26th Street, between Avenue M and Avenue N, Block
7661, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to August 7,
2007, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.