
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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September 20, 2007

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206-07-BZY

712 6th Avenue, Between 22nd and 23rd Streets, Block 899, Lot(s) 40, Borough of **Brooklyn, Community Board: 7**. Extension of time (11-332) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on November 16, 2005. R6B Zoning District .

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.

207-07-A

48-20 57th Avenue, Westerly side of 49th Street at 57th Avenue, Block 2564, Lot(s) 1, Borough of **Queens, Community Board: 5**. Proposed construction of a four story commercial warehouse located within the bed of mapped street (48th St.) contrary to Section 35 of the General City Law Section 35. M3-1 Zoning District.

208-07-BZY

72-76 Grand Avenue, Grand Avenue between Myrtle and BQE service road (Park Avenue), Block 1892, Lot(s) 48, Borough of **Brooklyn, Community Board: 2**. Extension of time (11-331) – To complete construction of a minor development commenced prior to the amendment of the zoning district regulations on July 25, 2007.

209-07-BZ

187-30 Grand Parkway, Southwest corner of 188th Street and Grand Central Parkway., Block 9969, Lot(s) 12, Borough of **Queens, Community Board: 8**. Under 72-21 – To increase floor area and permit encroachment in, and reduce the depth of a portion of a required front yard.

210-07-BZ

15 Luger Street, Northern side of Luger Street between Columbia and Hicks Streets., Block 513, Lot(s) 44, Borough of **Brooklyn, Community Board: 6**. Under 72-21 – To permit the proposed residential development in an M1-1 zoning district.

211-07-BZ

1149 East 22nd Street, North of Avenue K, south of Avenue J, Block 7604, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. (SPECIAL PERMIT) 73-622-enlargement of a single family dwelling.

CALENDAR

OCTOBER 2, 2007, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 2, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

919-57-BZ

APPLICANT – Cullen and Dykman LLP by Gary Goldman, owner; Stanley Halpern, lessee.

SUBJECT – Application August 20, 2007 – Extension of Term, ZR11-411 of a previously granted variance for the continued operation of a UG6 take out restaurant in an R3-2 zoning district which expired on March 25, 2003.

PREMISES AFFECTED – 4912 Avenue K, south side of Avenue K between East 49th Street and Utica Avenue, Block 7829, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

382-80-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Full Gospel New York Church, owners.

SUBJECT – Application June 29, 2007 - Extension of Term of a previously granted variance, which expired on July 1, 2005, to allow the operation of a theater (Playhouse 91) on the mezzanine and second floors located in an R8b zoning district.

PREMISES AFFECTED – 316 East 91st Street, south side of East 91st Street, 250' east side of Second Avenue, Block 1553, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

2-07-BZ thru 5-07-A

APPLICANT – Sheldon Lobel, P.C., for Ron Karo, owner.
SUBJECT – Application January 8, 2007 – To allow construction of four-3story 2 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED– 3212, 3214, 3216, 3218, Tiemann Avenue, northeast corner of Tiemann Avenue and unnamed Street, Block 4752, Lots 128, 129, 132, 133, Borough of Bronx.

COMMUNITY BOARD #12BX

39-07-BZ thru 40-07-A

APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.

SUBJECT – Application February 2, 2007 – Proposed construction of a 3 story, 3 family located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED –3248, 3250, Givan Avenue, unnamed street between Wickham and Givan Avenue,, Block 4755, Lots 65 & 66, Borough of Bronx.

COMMUNITY BOARD #12BX

156-07-A

APPLICANT – Jorge F. Canepa, for Victor Battaglia, owner.

SUBJECT – Application June 11, 2007 – Proposed construction a swimming pool and equipment room, located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 60 Chipperfield Court, 433.95' south of the corner between Chipperfield Court and Ocean Terrace, Block 687, Lot 337, Borough of Staten Island.

COMMUNITY BOARD #2SI

OCTOBER 2, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 2, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

79-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Power Test Realty Company, LP, owner.

SUBJECT – Application April 12, 2007 – under §11-411 to re-establish the previously granted variance permitting the operation of an automotive service station with accessory uses which is not permitted as-of-right in a C2/2R3-2 zoning district as per section 32-10 of the zoning resolution. The prior BSA grant was under calendar number 711-53-BZ and expired on July 24, 2001.

PREMISES AFFECTED – 114-05 Farmers Boulevard, east side of Farmers Boulevard between Murdock Avenue and 114th Road, Block 11007, Lot 5, Borough of Queens.

COMMUNITY BOARD #12Q

CALENDAR

114-07-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Sullivan Mountain RE, LLC, owner.

SUBJECT – Application May 7, 2007 – Special Permit (§73-19) to allow a day-care center (school), (UG3). M1-1 district.

PREMISES AFFECTED – 7-05 152nd Street, 152nd Street, east side at intersection with Powells Cove Boulevard, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD # 7Q

122-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Kingswood Partners, LLC, owner; TSI Midwood LLC, owner.

SUBJECT – Application May 15, 2007 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on portions of the first and second floors of a three-story commercial building. The proposal is contrary to section 32-00. C4-4A zoning district.

PREMISES AFFECTED – 1630 East 15th Street, westerly side of East 15th Street, 50' north of Kings Highway, Block 6777, Lots 17 and 24, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

148-07-BZ

APPLICANT – Ivan Khoury, for Kerry Riorden, owner; Tribeca Spa of Tranquility, lessee.

SUBJECT – Application June 6, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment. The proposal is contrary to section 42-10. M1-5 zoning district within the Tribeca Mixed-Use Special District.

PREMISES AFFECTED – 462 Greenwich Street, 49'-8.5" south from the corner of Greenwich and Watts Streets, Block 224, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

176-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Fei Guo, owner.

SUBJECT – Application June 29, 2007 – Variance (§72-21) to permit the alteration and enlargement of an existing one-story single family home for commercial use. The proposal is contrary to sections 22-12 (use), 23-45(a) (front yard), and 23-461(a) (required 5' side yard). R4 district.

PREMISES AFFECTED – 50-34 69th Street, aka 68-18 Garfield Avenue, southwest corner of the intersection of Garfield Avenue and 69th Street, Block 2425, Lot 33, Borough of Queens.

COMMUNITY BOARD #2Q

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 16, 2007, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for North Seven Associates, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of time (11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

OCTOBER 16, 2007, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 16, 2007, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

331-06-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for Putnam Holding Corp., owner.

SUBJECT – Application December 27, 2006 – Variance under § 72-21 to allow a three-family dwelling to violate front yard (§ 23-45) and side yard (§ 23-462(a) requirements. R4 district.

PREMISES AFFECTED – 3647 Palmer Avenue, south side of Palmer Avenue, between Needham Avenue and Crawford Avenue, Block 4917, Lot 17, Borough of Bronx.

COMMUNITY BOARD #12BX

Jeff Mulligan, Executive Director

Jeff Mulligan, Executive Director

OCTOBER 16, 2007, 10:00 A.M.

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 11, 2007
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

80-54-BZ, Vol. II

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates LLC, owner.

SUBJECT – Application July 2, 2007 – ZR §11-411 for the Extension of Term of a previously granted variance which, which expired on July 2, 2006, to permit commercial uses on the first floor and cellar of an existing residential building located in an R8B zoning district; the Extension of Time to obtain a Certificate of Occupancy which expired on April 24, 2002 and a Waiver of the rules.

PREMISES AFFECTED – 150 East 39th Street, Located on south side of 39th Street between Third and Lexington Avenues, Block 894, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, and an extension of the term for a previously granted variance to permit commercial uses (Use Group 6) on the first floor and cellar of an existing residential building, which expired on July 2, 2006; and

WHEREAS, a public hearing was held on this application on August 14, 2007, after due notice by publication in *The City Record*, and then to decision on September 11; and

WHEREAS, the subject premises is a 16-story mixed-use building located on the south side of East 39th Street, between 3rd and Lexington Avenues, within an R8B zoning district; and

WHEREAS, on December 13, 1955, under the instant BSA Cal. No., the Board granted a variance to permit office and retail uses on floors 1-5 of the premises; and

WHEREAS, the variance was subsequently amended to convert all floors of the premises except the cellar and first floor to as-of-right residential use; and

WHEREAS, the term of the variance was last extended on July 2, 1996 for a period of ten (10) years, expiring on July

2, 2006; and

WHEREAS, on April 23, 2002, the Board amended the variance to permit the use of a portion of the cellar for a recreation room with fitness equipment for residents of the premises, and required that an amended Certificate of Occupancy be obtained within one year; and

WHEREAS, this application seeks to extend the term of the variance for an additional ten years and to extend the time to obtain an amended Certificate of Occupancy; 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 December 13, 1955, so that as amended this portion of the resolution shall read: “to grant an extension of the special permit for a term of ten (10) years from the expiration of the last grant, to expire on July 2, 2016; to grant a one-year extension of term to obtain a certificate of occupancy; *on condition* that any and all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this grant shall expire on July 2, 2016;

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

THAT an amended Certificate of Occupancy shall be obtained by September 11, 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. 104817352)

Adopted by the Board of Standards and Appeals, September 11, 2007.

1328-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC., owner.

SUBJECT – Application June 5, 2007 – Extension of Term for a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 165 West End Avenue, 100’ northwest corner of West 66th Street and End Avenue, Block 1179, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law (“MDL”) for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

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

WHEREAS, the subject premises is located on the west side of West End Avenue between West 66th and West 67th Streets; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, with 227 spaces on the cellar level and 218 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1329-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1328-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

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

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

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

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

(DOB Application No. 104719038)

Adopted by the Board of Standards and Appeals, September 11, 2007.

1330-66-BZ

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Time to request a variance, originally granted under §60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED – 205 West End Avenue, West 70th Street, between West End and Freedom Place, Block 1179, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #7M

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, and an extension of the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law (“MDL”) for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

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

WHEREAS, the subject premises is located on the south side of West 70th Street between West End Avenue and Freedom Place; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning

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district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, having its entrance on Freedom Place, with 131 spaces on the cellar level and 145 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1331-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1330-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 104706908)

Adopted by the Board of Standards and Appeals, September 11, 2007.

APPLICANT – Sheldon Lobel, P.C., for ACP Lincoln Garages, LLC, owner.

SUBJECT – Application June 5, 2007 – Extension of Term – To request a variance, originally granted under Section 60(3) of the Multiple Dwelling Law.

PREMISES AFFECTED –185 West End Avenue, northwest corner of West 66th Street and West End Avenue, Block 1179, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

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, and an extension of the term for a previously granted variance under § 60(3) of the Multiple Dwelling Law ("MDL") for a transient parking garage, which expired on July 5, 2007; and

WHEREAS, a public hearing was held on this application on this application on July 24, 2007, after due notice by publication in *The City Record*, with continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

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

WHEREAS, the subject premises is located on the West side of West End Avenue between West 69th and West 70th Streets; and

WHEREAS, the site is occupied by a 28-story plus cellar and sub-cellar multiple dwelling building; and

WHEREAS, the site is located within an R8 zoning district; and

WHEREAS, the cellar and subcellar levels are occupied by the garage, with 205 spaces on the cellar level and 206 spaces on the subcellar level; and

WHEREAS, on July 5, 1967, the Board granted a variance, under the subject calendar number, to permit surplus parking spaces not used by residents of the building, and not to exceed 50% of the total number of spaces, to be used for transient parking for a term of twenty (20) years; and

WHEREAS, on July 5, 1967, under BSA Cal. No. 1333-66-A, the Board granted an appeal to allow transient parking in the accessory garage by persons other than the occupants of the multiple dwelling, provided, however, that the requirements of BSA Cal. No. 1332-66-BZ were complied with; and

WHEREAS, on February 28, 1989 and May 19, 1998, under the subject calendar number, the Board granted ten-year extensions of term, with the most recent extension to expire on July 5, 2007; and

WHEREAS, no changes are proposed in the layout or

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operation of the transient parking garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on July 5, 1967, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from July 5, 2007, to expire on July 5, 2017; *on condition* that that all work shall substantially conform to drawings filed with this application; and *on further condition*:

THAT this term shall expire on July 5, 2017;

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

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

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

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

(DOB Application No. 104706917)

Adopted by the Board of Standards and Appeals, September 11, 2007.

7-00-BZ, Vol. III

APPLICANT – Friedman & Gotbaum, LLP, for Trustees of the NYC Rescue Mission, owners.

SUBJECT – Application July 26, 2007 – Extension of Time to Complete Construction for a Variance previously granted on May 30, 2000 to permit within an M1-5 zoning district an enlargement to a UG3, non-profit homeless shelter for men, (New York City Rescue Mission) which expired on February 10, 2005.

PREMISES AFFECTED – 90 Lafayette Street, northwest corner of Lafayette and White streets, Block 195, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of the

enlargement of an existing Use Group 3 non-profit homeless shelter; and

WHEREAS, a public hearing was held on this application on August 21, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, the application is brought on behalf of the Trustees of the NYC Rescue Mission, a non-profit entity; and

WHEREAS, the subject premises is located on the northwest corner of Lafayette and White Streets, within an M1-5 zoning district; and

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

WHEREAS, on May 30, 2000, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of the existing shelter at the premises; 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, in 2004 the Applicant sought, and the Board granted, a waiver of Z.R. § 72-23 to extend the time to complete construction for 18 months to February 10, 2005; and

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

WHEREAS, the Applicant represents that the NYC Rescue Mission has initiated a new fundraising campaign for the expansion of the mission as previously approved by the Board; and

WHEREAS, the applicant represents that the work has been divided into four phases, and that Phase I is fully complete and Phase II is expected to be completed in September 2007; and

WHEREAS, accordingly, the applicant requests a further extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that an additional eighteen-month 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 May 30, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a period of eighteen months 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 completed by March 11, 2009;

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

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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. 102242627)

Adopted by the Board of Standards and Appeals,
September 11, 2007.

671-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 24 Pack LLC, owner; Euclide Enterprises, Inc., lessee.

SUBJECT – Application March 21, 2007 – Amendment to a previously granted Variance (§72-21) to convert the existing service bays to an accessory convenience store, an area previously approved for a new bay to a mechanical room and (§11-412) to legalize a UG6 eating and drinking establishment (Texas Chicken); Extension of Time to complete construction and to obtain a Certificate of Occupancy and a Waiver of the rules in a C1-2/R-5 zoning district.

PREMISES AFFECTED – 1249-1265 Sutter Avenue, blockfront from Euclid Avenue to Doscher Street, Block 4249, Lots 55 & 59, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: John Ronan and Zekria Manely.

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 October 2, 2007, at 10 A.M., for decision, hearing closed.

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

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

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

September 25, 2007, at 10 A.M., for decision, hearing closed.

142-70-BZ

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

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

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

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Barbara Hair.

For Opposition: Susanne Schrepp and Brandon Kielbasa.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

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

APPEARANCES –

For Applicant: Alan Sigman.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

997-84-BZ

APPLICANT – Stadtmauer Bailkin, LLP, for 222 Union Associates, owner.

SUBJECT – Application March 2, 2007 – Extension of Term/Amendment/Waiver for a special permit which expired on September 10, 2005, to revise the BSA plans to reflect existing conditions utilizing the Board's formula for attended parking of one space per 200 square feet, and the legalization of the existing automobile lifts within the parking garage.

PREMISES AFFECTED – 800 Union Street, southside of Union Street, between 6th and 7th Avenues, Block 957, Lot 29, Borough of Brooklyn.

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COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Calvin Wong and Howard Zipser.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 10 A.M., for continued hearing.

244-97-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Parkwood Realty Assoc., LLC, owner; AGT Crunch New York, lessee.

SUBJECT – Application July 6, 2007 – Extension of Term/Time/Amendment/ Waiver for a Physical Cultural Establishment "Crunch Fitness" filed pursuant to §§ 73-11 and 73-36 to reopen the resolution for a special permit for a physical culture establishment "Crunch Fitness" adopted November 4, 1998, amended December 21, 1999, and corrected January 20, 2000: for a waiver for an extension of term which expires November 4, 2008; for the extension of time to obtain the Certificate of Occupancy; and for an amendment to the Resolution for an enlargement of the total PCE floor area within an existing two story commercial building, which the PCE will fully occupy, located in a C2-5/R-8B zoning district.

PREMISES AFFECTED – 162 West 83rd Street, south side of West 83rd Street, between Columbus and Amsterdam Avenues, Block 1213, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay.

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 September 25, 2007, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

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: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 4, 2006, acting on Department of Buildings Application No. 500689347, reads in pertinent part:

“No permit shall be issued for any building in the bed of any street without a variance from BSA”; and

WHEREAS, a public hearing was held on this application on June 12, 2007, after due notice by publication in the *City Record*, to continued hearings on July 10, 2007 and August 7, 2007, and then to decision on September 11, 2007; and

WHEREAS, this application seeks a waiver of General City Law Section 35 to permit the construction of one three-family home within the bed of a mapped street (Zev Place); and

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

WHEREAS, by letter dated June 12, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the application and advised the Board that there is an adopted Drainage Plan No. PRD-A-5, which calls for a future 10-inch diameter sanitary sewer and 21-inch diameter storm sewer to be installed in Zev Place, between Kansas Avenue and Rockwell Avenue; and

WHEREAS, therefore, DEP asked that the applicant provide a 35'-0" wide sewer corridor in the bed of the mapped street (Zev Place) for the purpose of the future installation, maintenance, and/or reconstruction of future sewers; and

WHEREAS, in response to DEP's request, the applicant proposes a 30'-0" wide sewer corridor for the installation, maintenance, and/or reconstruction of future sewers; and

WHEREAS, by letter dated April 30, 2007, DEP states that it has reviewed this proposal and finds it acceptable; and

WHEREAS, by letter dated October 3, 2006, the Department of Transportation (DOT), states that it has reviewed the application and advised the Board that the proposal does not reflect any provisions for an emergency vehicle access/turnaround, such as a cul-de-sac at the dead end of Rockwell Avenue; and

WHEREAS, the Board notes that the October 3, 2006 letter did not state that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, by letter dated March 26, 2007, in response to DOT's request, the applicant has submitted revised plans providing for an emergency vehicle access/turnaround; and

WHEREAS, by letter dated July 30, 2007, DOT states that it has reviewed the applicant's submission and has no further comments or objections; and

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

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approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated April 4, 2006, acting on Department of Buildings Application No. 500689347, 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 September 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;

THAT the lot subdivision is to be as approved by DOB; 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, September 11, 2007.

67-07-A

APPLICANT – Kevin Finnegan, Esq., for Benjamin Shaul, Magnum Mgmt., owner.

SUBJECT – Application July 17, 2007 – An appeal seeking to revoke permits and approvals that allow the construction of a penthouse that exceeds the permitted height limitations governed by ZR 23-692 (Sliver Law). R7-2 Zoning District.

PREMISES AFFECTED – 515 East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Kevin Finnegan.

For Opposition: Marivin Mitzner.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated February 15, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") addressed to Manhattan Borough President Stringer, Councilmember Mendez, and District Manager of Community Board 3 Stetzer, with respect to Alteration Application No.

104368845; and

WHEREAS, the Final Determination states, in pertinent part:

"This letter is in reference to your correspondence to me, dated September 18, 2006, regarding the Department's interpretation of NYC Zoning Resolution (ZR) § 23-692 (Sliver Law) in relation to the above referenced alteration application. Specifically, you requested that the Department reconsider, in light of ZR § 11-22, its approval of the applicant's exclusion of a penthouse from the calculation of building height under the Sliver Law.

"Although your letter refers to ZR § 11-22 as a provision that provides guidance in the calculation of building height under the Sliver Law, this statutory section is not applicable. Section 11-22 addresses the application of overlapping or contradictory regulations. Here, there is neither overlap nor contradiction.

"It has been the Department's practice to allow building height (which is not a defined term in the Zoning Resolution) of penthouses to exceed the width of the street for buildings covered by the Sliver Law in instances similar to the project in question, particularly in cases such as this where the penthouse is not visible from the street. It would be inconsistent with these prior decisions to overturn the approval of the penthouse here. It is the Department's position that the addition of a penthouse at the building in question does not violate the Sliver Law as the continuity of the street wall has been maintained. In accordance with this interpretation, the penthouse, as constructed with a twenty foot setback from the street wall, complies with ZR § 23-692.

"Please accept this letter as a final determination by the Department, appealable to the Board of Standards and Appeals"; and

WHEREAS, a public hearing was held on this appeal on July 17, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

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

WHEREAS, a representative from Borough President Stringer's Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of Council Member Mendez' Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Senator Connor's Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Assembly Speaker Silver's Office testified at hearing in support of the instant appeal; and

WHEREAS, representatives of several civic associations

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testified at hearing in support of the instant appeal; and

WHEREAS, DOB, Appellant Tenants Association of 515 East 5th Street, and the owner of 515 East 5th Street (the "Owner" and the "Building") have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the addition of a new sixth floor and penthouse, to be occupied by four duplex apartments, to the Building, a five-story "old law" tenement, which is located in an R7-2 zoning district; and

WHEREAS, an alteration permit application was filed under DOB's professional certification program, and the initial work permit was issued on March 31, 2006; and

WHEREAS DOB subsequently conducted a special audit of the approved plans, and on May 8, 2006 issued an Intent to Revoke Approval(s) based on nineteen Building Code and zoning objections; and

WHEREAS, Objection No. 6 in the May 8, 2006 Intent to Revoke Approval(s) stated, in pertinent part;

"ZR 23-692: Sliver Law: Height Regulation Narrow Building:

a. Proposed vertical enlargement is higher than 60' which is width of narrow street, and it is contrary to Resolution 23-692, hence not permitted.

Indicate compliance in height and setback diagram"; and

WHEREAS, the plans were revised to correct various violations and were approved on June 29, 2006; and

WHEREAS, the plans approved on June 29, 2006 still showed a building exceeding the 60-foot maximum height that Appellant argues is imposed by Z.R. § 23-692 (the "Sliver Law"); and

WHEREAS, on July 26, 2006, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer wrote to the Manhattan Borough Commissioner requesting reconsideration of its approval of the revised plans; and

WHEREAS, although the Manhattan Borough Commissioner responded on August 25, 2006 and issued a second Intent to Revoke Approval(s) and Permit(s) and a Partial Order to Stop Work Immediately, he maintained that the amended plans did not violate the Sliver Law; and

WHEREAS, on September 18, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer requested that the Manhattan Borough Commissioner reconsider his application of the Sliver Law in light of Z.R. §23-62, which does not include penthouses among "permitted obstructions"; and

WHEREAS, on February 15, 2007 the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

PROVISIONS OF THE ZONING RESOLUTION AND BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the Sliver Law (comprised of Z.R. §§ 23-691 and 692, enacted in 1983, established limited height districts and regulates the height of new buildings and

enlargements of existing buildings that have street walls of 45 feet or less in width), reads, in pertinent part:

"Subject to applicable front height and setback regulations, or any height limitations of the underlying district, no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less. When the *street walls* of a new *building* or *enlargement* front on two *streets* on a *corner lot*, the height of the *building* shall not exceed the width of the abutting *wide street* or 100 feet, whichever is less.

"However, if the *street wall* of the new or *enlarged building* abuts a contiguous and fully attached existing *building street wall* that exceeds the height permitted above, such new or enlarged building street wall may reach the height of:

- (a) the tallest of such abutting building walls if it fronts on a *wide street*;
- (b) the lowest of such abutting building walls if it fronts on a *narrow street* provided that:
 - (1) there shall be no penetration of the *sky exposure plane* required by the underlying districts for any portion of such new or *enlarged buildings*; and
 - (2) such height does not exceed any height limitation of the underlying district"; and

WHEREAS, Z.R. § 23-62 (titled "Permitted Obstructions"), relied upon by Appellant, reads, in pertinent part:

"In all *Residence Districts*, except as provided in Section 23-621 (Permitted obstructions in certain districts), the following shall not be considered obstructions and may thus penetrate a maximum height limit or *front* or *rear sky exposure planes* set forth in Sections 23-63 (Maximum Height or Walls and Required Setbacks), 23-64 (Alternate Front Setbacks) or 23-69 (Special Height Limitations):

- (a) Balconies, unenclosed subject to the provisions of Section 23-13;
- (b) Chimneys or flues, with a total width not exceeding 10 percent of the *aggregate width of street walls* of a *building* at any level;
- (c) Dormers having an *aggregate width of street walls* equal to not more than 50 percent of the width of the *street wall* of a *detached* or *semi-detached single- or two-family residence*;
- (d) Elevators or stair bulkhead, roof water tanks or cooling towers (including enclosures), each having an *aggregate width of street walls* equal to not more than 30 feet. However, the product, in square feet, of the *aggregate width of street walls* of such obstructions facing each *street* frontage, times their average height, in feet, shall not exceed a figure equal to four times the width, in feet, of the *street wall* of the *building* facing

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- such frontage;
 - (e) Flagpoles or aerials;
 - (f) Parapet walls, not more than four feet high;
 - (g) Wire, chain link or other transparent fences.
- Building columns having an aggregate width equal to not more than 20 percent of the *aggregate width of street walls* of a building are a permitted obstruction, to a depth not exceeding 12 inches, in an *initial setback distance*, optional front open area, or any other required setback distance or open area set forth in Sections 23-63, 23-64, or 23-65 (Tower Regulations)”; and

WHEREAS, § 27-306(c) of the Building Code, relied upon by DOB in interpreting Z.R. § 23-692, reads, in pertinent part:

“In applying the provisions of this code governing height limits, the following appurtenant structures shall not be included in the height of the building unless the aggregate area of all such structures exceeds thirty-three and one-third percent of the area of the roof of the building upon which they are erected:

* * *

- (c) Roof structures, bulkheads, and penthouses”;
- and

DISCUSSION

A. The Basis of the Appeal – The Plain Meaning of the Zoning Resolution

WHEREAS, Appellant, citing Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997), argues that the plain language of the Sliver Law is unambiguous, and that under applicable New York decisional law on statutory interpretation, DOB may not go outside the zoning text, as it has by referring to the Building Code, to interpret the Sliver Law’s unambiguous language; and

WHEREAS, the Sliver Law regulates new buildings or enlargements of existing buildings such that “no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less”; and

WHEREAS, it is undisputed that the width of East 5th Street is sixty (60) feet; and

WHEREAS, Appellant argues that the height of the Building is therefore limited to sixty (60) feet; and

WHEREAS, it is also undisputed that the height of the Building, *including the penthouse*, exceeds sixty (60) feet; and

WHEREAS, Appellant therefore concludes that DOB erred in permitting the enlargement of the Building; and

WHEREAS, Appellant notes that the term “height” (although not defined) appears in the Zoning Resolution’s chapter titled “Bulk Regulations for Residential Buildings in Residential Districts” over 200 times; and

WHEREAS, Appellant further cites Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998) for the proposition that, “In construing statutes, it is a well-established rule that resort must be had to the natural

significance of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning”; and

WHEREAS, Appellant concludes that DOB acted unreasonably in looking beyond the plain language of the Zoning Resolution to the language of the Building Code in order to construe the meaning of the Sliver Law; and

WHEREAS, Appellant also argues that even if DOB were justified in looking beyond the Zoning Resolution to determine the height of the building, DOB’s application of the Penthouse Rule (described below) is arbitrary and capricious when viewed in the context of the September 24, 2003 report of the DOB Professional Technical Forum, which indicates that there is no exception for penthouses under the Sliver Law and the position adopted by DOB in BSA Cal. No. 15-05-A, in which DOB objected to a new building application on the basis that the “Proposed Penthouse penetrates special height limitation of 60’ (width of abutting street) contrary to Resolution 23-692”; and

WHEREAS, finally, Appellant states that DOB’s interpretation of the Sliver Law is the equivalent of an act of legislation, which requires action by the City Planning Commission and the City Council, or the equivalent of the grant of a variance, which requires action by the Board, and as such is outside DOB’s authority; and

B. The Department of City Planning’s Submission

WHEREAS, the Department of City Planning (“DCP”), although not a party, submitted a letter to the Board in connection with the instant appeal; and

WHEREAS, DCP states that zoning rules have been frequently applied without the need for a special definition of “height”; and

WHEREAS, DCP, referring to the definition of “building” as “any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a *zoning lot*,” states that the “height of a building” is therefore “the height measured up to the roof level, exclusive of permitted obstructions”; and

WHEREAS, DCP notes that “building height” and “*building* height” are used 73 times in the Zoning Resolution without being defined; and

WHEREAS, DCP further observes that the terms “building height” and “*building* height” are customarily applied to govern permissible heights of Quality Housing buildings and buildings in contextual districts, limited height districts, special purpose districts, and on the waterfront; and

WHEREAS, DCP concludes that in a case “where the abutting street is a narrow street (60 feet) and the provisions of the third paragraph of Z.R. § 23-692 [which allows the street wall of the building to reach the height of an adjacent building] do not apply, the maximum permitted height of the “sliver” building, or enlargement thereof, is 60 feet, as measured from the curb level to the highest roof level, and only the items listed in the Zoning Resolution as permitted

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obstructions may exceed that height”; and

C. DOB’s Analysis of the Zoning Resolution and its Interpretive Authority

WHEREAS, DOB argues that “the Zoning Resolution rarely contains plain language,” and that therefore DOB must attempt to construe the Zoning Resolution in accordance with the intent of the City Planning Commission in adopting the Sliver Law; and

WHEREAS, DOB argues that because “height” is not defined within the Zoning Resolution, it is within DOB’s authority to construe the meaning of “height” in interpreting the Zoning Resolution in a way that gives effect to the legislative intent of its drafters; and

WHEREAS, DOB contends that the legislative intent in enacting the Sliver Law was not to restrict density but was aesthetic in nature; and

WHEREAS, DOB reiterates the rationale of the Final Determination that it is permissible for a penthouse to exceed the height limitations of Z.R. § 23-692 if it complies with the Penthouse Rule, particularly when the penthouse is not visible from the street and the penthouse is set back; and

WHEREAS, pursuant to the Penthouse Rule, codified in Building Code § 27-306(c), DOB does not include a penthouse in the calculation of the height of a building unless its area exceeds one-third of the area of the roof; and

WHEREAS, DOB also asserts that the intent of the Sliver Law is to regulate the fronts of buildings and to encourage contextual buildings, and not to prevent building owners from constructing penthouses; and

WHEREAS, DOB further contends that it is within DOB’s authority to turn to the Building Code in an effort to define “height”; and

WHEREAS, DOB also argues that its interpretation of “height” is similarly consistent with the Multiple Dwelling Law; and

WHEREAS, DOB therefore concludes that it properly excluded the penthouse in its calculation of the height of the Building; and

D. Owner’s Interpretations of Applicable Sections of the Zoning Resolution and the Board’s Authority

1. The Penthouse is not Part of the Building and Therefore Should not be Included in Measuring the Height of the Building

WHEREAS, the Building’s Owner, through counsel, contends that while the words of the Zoning Resolution are generally “plain English words,” that within the framework of the Zoning Resolution as a whole they are ambiguous and require interpretation to give effect to the legislative intent of the City Planning Commission; and

WHEREAS, the Owner notes that “penthouse” is not defined within the Zoning Resolution; and

WHEREAS, Owner notes also that Z.R. § 23-691 regulates “buildings or other structures,” and that Z.R. § 23-692 regulates only the height of “buildings”; and

WHEREAS, Owner also observes that Building Code

§ 27-232 defines a penthouse as “an enclosed structure on or above the roof of any part of a building” and that therefore a penthouse must be distinct from the building itself; and

WHEREAS, based on the foregoing, Owner contends that penthouses are not part of the buildings to which they are attached, but are rather “other structures,” and are therefore not regulated under Z.R. § 23-692, the applicable section of the Sliver Law, which regulates “buildings” only; and

WHEREAS, Owner further argues that the Zoning Resolution acknowledges that such “other structures” are different from buildings by describing under what circumstances penthouses are deemed to contain floor area; and

WHEREAS, Owner concludes that because a penthouse is an “other structure” distinct from a building, that the height of a penthouse cannot be included in the height of a building in applying Z.R. § 23-692, and that therefore the Building does not violate the Sliver Law; and

2. Equitable and Other Relief

WHEREAS, Owner, relying on the Board’s resolution in BSA Cal. No. 152-97-A (the “Travelers Umbrella”), also argues that if the Board does grant the instant appeal, it has the jurisdiction to fashion equitable relief so as to make its rule prospective only and not to require the Owner either to remove the existing penthouse or to apply for relief in the form of a variance from the Board; and

WHEREAS, alternatively, relying on BSA Cal. Nos. 330-03-A and 132-03-A, Owner argues that the Board should, within the context of the instant appeal, pursuant to City Charter § 666(7) grant the equivalent of a variance to permit the penthouse that has been constructed; and

E. Appellant’s Response to DOB’s and Owner’s Arguments

WHEREAS, Appellant argues that even if the language of the Sliver Law were deemed to be ambiguous, DOB exceeded its authority by going beyond the text of the Zoning Resolution to interpret Sliver Law such that the penthouse should not be included in the “height of the building,” and that the Zoning Resolution itself sets standards for measuring building height; and

WHEREAS, Appellant argues that assuming, *arguendo*, that the Sliver Law were ambiguous, DOB should have relied on Z.R. § 23-62 (“Permitted Obstructions”), which lists permitted obstructions that “may thus penetrate a maximum height limit” and which does *not* list penthouses among such permitted obstructions; and

WHEREAS, Appellant concludes that the penthouse must be included in the “height of the building,” and that the Building therefore violates the provisions of the Sliver Law; and

WHEREAS, furthermore, Appellant argues that where the language of the Zoning Resolution is unambiguous, DOB’s past practice in applying the “Penthouse Rule” is not relevant and should carry no weight in the Board’s resolution of the instant appeal, and that even if it were

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permissible for DOB to have created the Penthouse Rule for the purpose of interpreting Z.R. § 23-692, DOB has not applied the Penthouse Rule consistently and has applied the Penthouse Rule inconsistently within the context of the events that form the basis of the instant appeal; and

WHEREAS, Appellant observes that because the definition of a building's "floor area" in Z.R. § 12-10 specifically includes "floor space used in penthouses," Owner's argument that a penthouse is an "other structure" and not part of a building is incorrect; and

WHEREAS, Appellant further observes that the Building Code, relied upon by DOB in the Penthouse Rule, also defines a building so as to include appurtenant structures such as penthouses; and

WHEREAS, Appellant observes that with respect to Owner's request that the Board exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that does "substantial justice" to Owner, the proper procedure for such relief is an application for a variance pursuant to Z.R. § 72-21; and

WHEREAS, Appellant further notes that Owner's argument that it justifiably relied on DOB's policy in applying the Penthouse Rule to interpret the Sliver Law is weak because DOB's interpretations of the Sliver Law have been inconsistent, even as applied to the events giving rise to the instant appeal, and therefore could not have created any justifiable expectation about the application of the Sliver Law to the Building; and

WHEREAS, with respect to Owner's request that the Board exercise its alleged equitable powers to protect Owner from having to demolish the penthouse it constructed atop the Building, Appellant notes that it has pursued the instant appeal at considerable expense, and that it would be unfair to Appellant for the Board to issue a merely advisory opinion, rather than to grant appellant the specific relief to which it is entitled; and

CONCLUSION

WHEREAS, the Board agrees with Appellant and DCP that the language of Z.R. § 23-692 is unambiguous with respect to the meaning of "height of the building" and its limitation to the width of the abutting street; and

WHEREAS, the Board further agrees that merely because "height" is not defined in the Zoning Resolution does not mean that the word is ambiguous, but rather that "height," which, as both Appellant and DCP have observed, is used repeatedly throughout the Zoning Resolution, has a commonly accepted meaning and does not require definition in the Zoning Resolution; and

WHEREAS, the Board is unpersuaded by DOB's and Owner's attempts to create ambiguity in the Zoning Resolution where none exists; and

WHEREAS, specifically, the distinction between the use of "building or other structure" in Z.R. § 23-691 and "building" in Z.R. § 23-692 does not render ambiguous the meaning of "building" or "building height" or justify turning to the Building Code to clarify an ambiguity that does not

exist; and

WHEREAS, the Board agrees with DCP that the definition of "building" as "any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a zoning lot," reinforces the plain meaning of height as measured to the highest roof level, excluding any specifically designated "permitted obstructions"; and

WHEREAS, even if the Board credited DOB's argument that the language of the Sliver Law is ambiguous, DOB has not established that the text was not intended to restrict the overall heights of buildings or to give DOB the authority to establish its own exemptions to the requirements of the Sliver Law, such as DOB's Penthouse Rule; and

WHEREAS, the Board finds that the fact that the Sliver Law establishes exceptions to the general height limitation by permitting the street wall of the new or enlarged building to match the street wall of an adjacent building in certain circumstances argues against DOB's position that CPC intended for DOB to create the exceptions to the Sliver Law; and

WHEREAS, as to DOB's argument, the Board notes that DOB provides no support from the CPC Report for its argument that the Sliver Law was intended to be limited to serving an aesthetic purpose and to regulating front walls only, and therefore the Board is unconvinced that the Sliver Law should be so narrowly read; and

WHEREAS, the Board agrees with Appellant that the Building Code cannot override the Zoning Resolution and the limitations it establishes on the heights of buildings; and

WHEREAS, the Board agrees with Appellant that a penthouse is part of a building for the purpose of applying the Sliver Law, and that therefore the penthouse must be included in measuring the height of the Building; and

WHEREAS, the Board further agrees that, in the absence of action by the Board or by the City Planning Commission and City Council, DOB has exceeded its authority both in applying the Penthouse Rule and in limiting its application to instances in which the penthouse is set back and not visible from the street, such action being equivalent to a legislative act; and

WHEREAS, as to Owner's arguments with respect to equitable considerations, the Board disagrees that any hardship that may be imposed on the Owner is relevant to its disposition of the instant appeal; and

WHEREAS, with respect to Owner's argument that if the Board grants the appeal it should exercise equitable powers so that its determination only applies prospectively and would not apply to the Building, the Board does not have the authority simultaneously to determine that the building permits for the expansion of the Building were issued unlawfully and to permit DOB to ignore that fundamental fact; and

WHEREAS, furthermore, as an administrative body, the Board does not have the equitable powers of a court to address any alleged unfairness to the Owner that may result

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from its decision in the instant appeal; and

WHEREAS, the Board rejects Owner's argument that the Board should exercise its jurisdiction under § 666(7) of the City Charter to create a variance to permit the penthouse addition to the Building to remain despite its noncompliance with zoning; and

WHEREAS, the proper procedure to request such relief from zoning is a variance application in which, after public notice and hearing, the Board could grant such variance pursuant to Z.R. § 72-01(b) and other applicable provisions of Article VII, Chapter 2 of the Zoning Resolution, which define the procedures and standards pursuant to which the Board can vary the Zoning Resolution; and

WHEREAS, the Board will not act on Owner's suggestion that it could fashion relief for Owner from its decision in the instant appeal in the absence of a demonstration on the record that Owner can meet the five findings required for a variance pursuant to Z.R. § 72-21; and

WHEREAS, further with respect to the Board's authority to vary the Zoning Resolution for the Building in the instant appeal, the Board disagrees that the prior Board resolutions cited by Owner are applicable: in BSA Cal. No. 330-03-A the Board required a demonstration of the required statutory findings under the MDL and furthermore limited the applicability of its resolution of that appeal to its specific and unique facts, and BSA Cal. No. 132-03-A was denied, so that the language relied upon by Owner is essentially equivalent to *dicta* and has no precedential value; and

WHEREAS, finally, with respect to the "Travelers Umbrella" case (BSA Cal. No. 152-97-A), the Board agrees with Appellant that the instant appeal is clearly distinguishable in that DOB's policy with respect to the sign at issue had been formalized in guidance documents whereas, in the instant appeal, DOB's standards were never formalized or uniformly applied even to the facts giving rise to the instant appeal; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated February 15, 2007, determining that the Building's expansion complies with the Sliver Law, is hereby granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

96-07-A

APPLICANT – Sheldon Lobel, P.C., for 4175 Building Corp., owner.

SUBJECT – Application April 20, 2007 – Appeal challenging Department of Buildings determination that since both buildings contain Community Facility uses, Section 24-551 of the Zoning Resolution which regulates side setbacks must be complied with. R5 Zoning District. PREMISES AFFECTED – 41-30/34 75th Street, 41st Avenue and Woodside Avenue, Block 1494, Lots 48 & 49, Borough

of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated April 13, 2007 by the Queens Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") addressed to counsel for 4175 Building Corp. ("4175 BC"), the owner of the Premises, with respect to New Building Application Nos. 402006878 and 402006887; and

WHEREAS, the Final Determination states, in pertinent part:

"In response to your letter dated March 29, 2007 regarding objection number 2 and 3 dated September 12, 2006, relative to the subject applications. You are advised that I modify said objections and condense it into a single denial, which stated as follows:

'Proposed portion of building, which exceeds 35 feet or more than three stories above the level of a side yard, is contrary to section Z.R. 24-551 which regulates side setbacks'.

The reason for the foregoing is that section Z.R. 24-551 is applicable in lieu of Z.R. 23-661, since both buildings contain community facility uses.

The foregoing denial supersedes the above mentioned objections issued by Plan Examiner Kai-Ki Wong. This response is my final determination"

and

WHEREAS, a public hearing was held on this appeal on June 17, 2007, after due notice by publication in *The City Record*, with continued hearings on July 24, 2007 and August 21, 2007, and then to decision on September 11, 2007; and

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

WHEREAS, DOB and 4175 BC have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns two of three 4-story buildings constructed on one zoning lot in an R5 zoning district, each of which contains a community facility use on the first floor and in the cellar, with residential use on the second, third and fourth floors; and

WHEREAS, the two buildings at issue are semi-detached, and share party walls with the building at 41-32 75th Street (which is located between them), and each has a side yard of 8' – 0"; and

WHEREAS, on October 5, 2004 DOB issued objections which stated, in pertinent part:

"Required side and rear setback from the yard lines above 33' – 0" as per 23-661, Z.R. for R5 zone"; and

WHEREAS, based on the October 5, 2004 objection, the

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plans were revised and subsequently approved on November 16, 2004; and

WHEREAS, after construction of the buildings, DOB conducted a post-approval audit, and the Queens Borough Deputy Commissioner issued a letter of intent to revoke the approvals, based on four new objections dated September 12, 2006; and

WHEREAS, the September 12, 2006 objections read, in pertinent part:

2. The subject building is contained portion of a community facility use and, that building only qualified as “any building” not a residential building as per definition of section 12-10 Z.R. therefore, the bulk regulation of Article II and chapter 4 is applied for the building partially used as community facility as per section 24-01 Z.R.
3. The section 24-551 Z.R. shall comply and limited building in R5, no portion of any building that is more than 35 feet or more than three stories above the level of a side yard; and

WHEREAS, at a subsequent meeting, objections 1 and 4 dated September 12, 2006 were deemed complied with; and

WHEREAS, a written appeal was made to the DOB Commissioner’s Executive Engineer with respect to objections 2 and 3; and

WHEREAS, the Executive Engineer denied the appeal on December 15, 2006; and

WHEREAS, on April 13, 2007, the Queens Borough Commissioner issued his final determination, cited above; and

WHEREAS, the instant appeal was filed with the Board on April 20, 2007; and

WHEREAS, new plans were subsequently filed in compliance with objections 2 and 3 of September 12, 2006 in connection with the issuance of a Temporary Certificate of Occupancy for 41-32 75th Street; and

WHEREAS, at hearing on June 19, 2007, the Board advised the Appellant that the new plans had eliminated the objections on which the appeal was based, and that the appeal would be dismissed; and

WHEREAS, Appellant subsequently withdrew the amended plans for 41-30 and 41-34 75th Street, and the Board permitted the appeal to continue; and

WHEREAS, however, at hearing on August 21, 2007, Appellant, through its counsel, requested permission to amend the appeal to include arguments on vested rights and/or detrimental reliance on the November 16, 2004 approvals; and

WHEREAS, at the August 21, 2007 hearing the Board declined to grant leave to amend the appeal to include the additional claim was; and

WHEREAS, the sole issue in the appeal is whether Z.R. § 24-551 applies to the Buildings in their entirety, as determined by DOB, or whether, as Appellant argues, Z.R. § 24-551 applies to the community facility portions of the Buildings and Z.R. § 23-661 applies to the residential portions of the Buildings; and

RELEVANT PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the first sentence of Z.R. § 24-01 (“Applicability of this Chapter,” referring to Article II, Chapter 4, “Bulk Regulations for Community Facility Buildings in Residence Districts”) provides that “the *bulk* regulations of this chapter [4] apply to any *community facility building* or any *building* used partly for a *community facility use* on any *zoning lot* located in any *Residence District* in which such *building* is permitted”; and

WHEREAS, Z.R. § 24-01 further states that, “As used in this Chapter, the term ‘any *building*’ shall therefore not include a *residential building*, the *bulk* regulations for which are set forth in Article II, Chapter 3”; and

WHEREAS, Z.R. § 23-01 (“Applicability of this Chapter,” referring to Article II, Chapter 3, “Bulk Regulations for Residential Buildings in Residence Districts”) states, “As used in this Chapter [3], the term ‘any *building*’ shall therefore not include a *community facility building* or a *building* used partly for *community facility uses*, the *bulk* regulations for which are set forth in Article II, Chapter 4”; and

WHEREAS, Z.R. § 24-551, found in Article II, Chapter 4 of the Zoning Resolution (titled “Bulk Regulations for Community Facility Buildings in Residence Districts”) provides that in an R5 district, “no portion of any *building* that is more than 35 feet or more than three *stories* above the level of a *side yard*, whichever is lower, shall be nearer to a *side lot line* bounding such *yard* than a distance equal to one-half the height above yard level of such portion of the *building*”; and

WHEREAS, Z.R. § 23-661, found in Article II, Chapter 3 of the Zoning Resolution (titled “Bulk Regulations for Residential Buildings in Residence Districts”) provides that, “In an R5 District, except R5A and R5D Districts, any portion of a *residential building* bounding a *side yard* or a *rear yard* which is more than 33 feet above the level of the *base plane* shall be set back from such *side yard line* or such *rear yard line* for a distance equal to one-half the height of that portion of the *residential building* which is higher than 33 feet above the level of the *base plane*”; and

WHEREAS, the two buildings at issue in the instant appeal are mixed-use, with community facility uses in the cellars and on the first floors, with residential use on the second through fourth floors; and

WHEREAS, DOB argues that Article II, Chapter 4 (Z.R. § 24-551) of the Zoning Resolution governs mixed-use buildings in residence districts when part of the building is used for community facility uses; and

WHEREAS, appellant contends that Article II, Chapter 4 (Z.R. § 24-551) applies only to the community facility portion of such buildings and that Article II, Chapter 3 (Z.R. § 23-661) applies to the residential portion of such buildings; and

WHEREAS, the Buildings would be compliant with zoning regulations if Appellant’s interpretation were correct, but are not in compliance with Z.R. § 24-551 if that provision is applied to the Buildings in their entirety; and

DISCUSSION

A. Appellant’s Analysis of the Zoning Resolution

WHEREAS, as noted above, Appellant argues that the residential bulk regulation of Article II, Chapter 3 should apply to the residential portion of the buildings, and that the

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community facility bulk regulations of Article II, Chapter 4 should apply to the community facility portion of the buildings; and

WHEREAS, Appellant points to no language in the Zoning Resolution that either a) contradicts DOB's application of Z.R. § 24-551 to the buildings in their entirety, or b) unambiguously indicates an intention on the part of the drafters of the Zoning Resolution to apply different bulk regulations to different parts of the same building; and

WHEREAS, in support of the proposition that a building that contains both community facility and residential uses should not be deemed subject to the requirements of Z.R. § 24-551, Appellant cites Z.R. § 12-10, which defines "community facility building" as "a *building* used only for a *community facility use*"; and

WHEREAS, Appellant concludes that Article II, Chapter 4 is applicable only to the part of the Buildings used for community facility use, and that Article II, Chapter 3 is applied to the residential part of the Buildings; and

WHEREAS, however, Z.R. §§ 23-01 and 24-01 both explicitly contemplate that a building used partly for residential and partly for community facility uses should in its entirety be subject to the requirements of Article II, Chapter 4 (Z.R. § 24-551); and

WHEREAS, Appellant further cites Z.R. § 12-10's definition of a residence as "a building or part of a building containing dwelling units" in support of its interpretation of Z.R. § 24-10; and

WHEREAS, the term "residence" appears nowhere in the relevant language of Z.R. §§ 24-10 and 23-10; and

WHEREAS, Appellant further points to potential instances in which, assuming DOB's argument set forth below that "the use of any building used partly for community facility uses makes the bulk regulations of Article II, Chapter 4 applicable in its entirety to the entire building," the "more generous" provisions of Article II, Chapter 4 would be applied to mixed community facility/residential buildings and the less generous provisions of Article II, Chapter 3 would be applied to residential buildings in R5 zoning districts; and

WHEREAS, Appellant posits that such application of Article II, Chapter 4 to mixed use community facility/residential buildings "would create chaos in regard to requirements for lot sizes[,] lot coverage, front yards, rear yards, [and] rear yard equivalents"; and

B. DOB's Interpretation of Applicable Sections of the Zoning Resolution

WHEREAS, DOB observes that Z.R. § 24-01 explicitly provides that the bulk regulations of Article II, Chapter 4 apply to "any *community facility* or any *building* used partly for *community facility use* on any *zoning lot* in any *Residence District* in which such *building* is permitted"; and

WHEREAS, DOB further argues that the next sentence of Z.R. § 24-01, which provides that, "As used in this Chapter, the term 'any *building*' shall therefore not include a *residential building*, the *bulk* regulations for which are set forth in Article II, Chapter 3," clarifies, consistent with DOB's interpretation of the Zoning Resolution, that where

the bulk regulations of Article II, Chapter 3, apply, the bulk regulations of Article II, Chapter 4 do not apply; and

WHEREAS, DOB concludes that Appellant's interpretation that the bulk regulations of Article II, Chapter 3 should apply to the residential portion of a mixed-use community facility and residential building and the bulk regulations of Article II, Chapter 4 apply to the community facility portion contradicts the plain language of Z.R. § 24-01; and

WHEREAS, DOB further observes that in Article II, Chapter 4, specific sections refer back to the regulations of Article II, Chapter 3, and that if Appellant's argument that the bulk regulations of Article II, Chapter 3 always applied to the residential portion of a mixed-use residential and community facility building, then these references would be mere surplusage; and

APPELLANT'S REQUEST TO AMEND THE APPEAL

WHEREAS, at the hearing on August 21, 2007, counsel for 4175 BC requested leave to amend the appeal to include a claim with respect to vested rights/detrimental reliance on the interpretation of the Zoning Resolution by a DOB examiner; and

WHEREAS, based on the explanation offered by counsel for 4175 BC at hearing the Board exercised its discretion and declined to grant leave to amend the appeal; and

WHEREAS, the only issue in this appeal is whether DOB correctly required compliance with Z.R. § 24-551; and

WHEREAS, a successful vested rights claim, whether under the Zoning Resolution or under a common-law theory of vested rights, requires the work at the Premises upon which the claim is based to have been done under a valid building permit; and

WHEREAS, if DOB correctly required compliance with Z.R. § 24-551, then the permit under which the buildings at the Premises were constructed could not have been validly issued; and

WHEREAS, the Board advised counsel for 4175 BC that he could seek to assert the new theory in a new appeal, but that in the interest of reaching a disposition of this appeal he would not be permitted to amend the appeal at the last minute; and

WHEREAS, the instant resolution does not address the issue of vested rights or of detrimental reliance; and

CONCLUSION

WHEREAS, the Board finds nothing in the language of the Zoning Resolution indicates the intention to apply different bulk regulations to the residential and community facility portions of a mixed-use residential/community facility building in an R5 zoning district; and

WHEREAS, the Board finds the language of Z.R. §§ 24-01 and 23-01 to be unambiguous in requiring the application of Article II, Chapter 4 (Z.R. § 24-551) to mixed-use community facility/residential buildings in R5 zoning districts; and

WHEREAS, the Board finds Appellant's attempts to cast doubt on the plain language of Z.R. §§ 24-01 and 23-01 to be unconvincing; and

WHEREAS, the issue in the instant appeal is limited to whether the bulk regulations of Article II, Chapter 4 should

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apply to the Buildings as DOB argues, or whether the bulk regulations of Article II, Chapter 4 should apply to the residential portions and the bulk regulations of Article II, Chapter 3 should apply to the community facility portions of the Buildings as Appellant argues; and

WHEREAS, the Board also finds that Appellant's argument that adopting DOB's interpretation will lead to a series of unintended consequences with respect to regulation of lot size, lot coverage, front yards, rear yards, and rear yard equivalents is not relevant to the issue before the Board in the instant appeal; and

WHEREAS, in the absence of ambiguity of the plain language of the zoning text, the Board declines to reinterpret the Zoning Resolution to avoid the series of entirely speculative harms that Appellant posits; and

WHEREAS, the Board has determined that because the November 16, 2004 approvals were not in compliance with the Zoning Resolution, as explained above, no vested rights would have been created by such approvals; and

WHEREAS, although the Board advised the Appellant at hearing that it could seek a determination on these issues in a separate appeal, the Board reaffirms its decision not to grant Appellant leave to amend the instant appeal to include arguments that the Board deems both nonmeritorious and untimely raised; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated April 13, 2007, determining that the requirements of Z.R. § 24-551 apply to the Buildings, is hereby denied.

Adopted by the Board of Standards and Appeals, September 11, 2007.

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: Adam Rothkrug.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for continued hearing.

73-07-A

APPLICANT– Fire Department of The City of New York
OWNER – L. W. Equity Associates Incorporated

LESSEE – Fabco Shoe Store

SUBJECT – Application March 30, 2007 – Application seeking to modify Certificate of Occupancy No. 300217414, to permit the issuance of an order by the Fire Department to require additional fire protection for the occupied cellar of the commercial structure in the form of an automatic sprinkler system under the authority of Section 27-4265 of the Administrative Code.

PREMISES AFFECTED – 2169-2171 86th Street, North side of 86th Street, 100' west from the corner of Bay Parkway, Block 6347, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

For Opposition: Otis Allen.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 10 A.M., for continued hearing.

138-07-A

APPLICANT – New York City Department of Buildings.

OWNER: 614 NYC Partners, Incorporated

SUBJECT – Application May 24, 2007 – Appeal seeking to revoke Certificate of Occupancy No. 104114487 that allowed the conversion of single room occupancy units (SRO) to Class A apartments without obtaining a Certificate of No Harassment from NYC Housing Preservation and Development (HPD). R8 Zoning District.

PREMISES AFFECTED – 614 West 138th Street, West 138th Street, east of Riverside Drive and west of Broadway, Block 2086, Lot 141, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Opposition: Mark E. Klein.

For Administration: John Beeme.

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

154-07-A

APPLICANT – Troutman Sanders, LLP, for 435 East 57th Apartments, Inc., owner.

SUBJECT – Application June 11, 2007 – Appeal seeking to revoke permits and approvals that allow a mechanical room which exceeds the maximum height permitted under Section 23-692(a) and is not listed as a permitted obstruction in Section 23-62. R10 Zoning district.

PREMISES AFFECTED – 441 East 57th Street, north side of east 57th Street, between 1st Avenue and Sutton, Block 1369, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCE –

For Applicant: Caroline G. Harris and Henry Radev.

For Opposition: Stuart Beckerman and Stephen P. Krammer

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of Department of Buildings.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 11, 2007

1:30 P.M.

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

ZONING CALENDAR

161-06-BZ

CEQR #07-BSA-006X

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 – 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 decisions of the Bronx Borough Commissioner, dated June 27, 2006, acting on Department of Buildings Application Nos. 201050469 and 201050478, read in pertinent part:

“Proposed Residential Zoning Use Group 2 in a C8-2 Zoning District is not permitted as-of-right and therefore, is contrary to the stated section (32-10) of the New York City Zoning Resolution, and requires a referral to the Board of Standards and Appeals (BSA);” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-2 zoning district, the proposed construction of two eight-story mixed-use residential/commercial/community facility buildings, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 17, 2007 after due notice by publication in *The City Record*, with continued hearings on July 10, 2007, August 14, 2007, and August 21, 2007 and then to decision on September 11, 2007; and

WHEREAS, this application is brought on behalf of the Doe Fund (“Doe”), a not-for-profit entity; and

WHEREAS, Community Board 7, Bronx, recommends approval of this application on condition that the single unit size at 3349 Webster Avenue be increased to a minimum of 400 sq. ft. per dwelling unit; the Community Board also recommends that the building be reduced to six stories; and

WHEREAS, the New York City Department of Homeless Services submitted a letter in support of the proposal; and

WHEREAS, Borough President Adolfo Carrion, Jr. submitted a letter in support of the proposal; and

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

WHEREAS, the site has a lot area of approximately 19,800 sq. ft., and is on the west side of Webster Avenue, 200 feet south of East Gun Hill Road; and

WHEREAS, the site is currently occupied by a one-story garage building for an automotive repair business, which will be demolished, and a parking lot; and

WHEREAS, the applicant proposes to construct two adjacent eight-story residential buildings - 3349 and 3365 Webster Avenue (“3349 Webster” and “3365 Webster”, respectively); and

WHEREAS, 3349 Webster will include 41,114 sq. ft. of floor area and 84 single-room occupancy units identified as non-profit residences for the elderly (Use Group 2); and

WHEREAS, 3349 Webster will also include accessory community facility space (Use Group 4) and ground floor retail use (Use Group 6); and

WHEREAS, 3365 Webster will include 52,306 sq. ft. of floor area and 56 dwelling units (14 studios, 14 one-bedroom, and 28 two-bedroom apartments) for low-income and formerly homeless families; and

WHEREAS, 3365 Webster will also include accessory community facility space (Use Group 4), ground floor retail (Use Group 6), and 11 parking spaces at the rear of the building; and

WHEREAS, together, the buildings will have 140 units; a total floor area of 96,420 sq. ft. (4.68FAR); a residential floor area of 87,269 sq. ft.; a commercial floor area of 3,669 sq. ft.; a community facility floor area of 1,761 sq. ft.; a street wall height of 70’-6”; and a total height of 80’-3”; and

WHEREAS, the two buildings will also accommodate other tenants eligible for Doe housing programs who are not seniors or families, as space permits; and

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WHEREAS, as to programmatic needs, the applicant represents that the proposed housing program is designed to provide low cost housing for graduates of the Doe Fund work training initiatives who have been successfully employed but who cannot afford market rate housing; and

WHEREAS, the units will be restricted to families and individuals with annual incomes at or below 60 percent of the adjusted medium income established for the New York metropolitan area, many of whom will be formerly homeless and will pay below market rates; and

WHEREAS, 3349 Webster will be reserved for tenants who are 55 years and older and will be limited to one tenant per unit; and

WHEREAS, the applicant represents that Doe worked closely with HPD to design the facility with components of existing facilities with comparable missions; and

WHEREAS, further, the applicant represents that the design includes access to onsite accessory social service programming, which includes training, counseling, and case management; and

WHEREAS, Doe will secure financing from State and City programs including Low Income Tax Credits, Tax Exempt Bond Financing, and New York City Real Estate Tax Abatements; and

WHEREAS, the applicant further represents that the size of the units, including units smaller than 400 sq. ft., follows HPD's Supportive Housing Loan Program guidelines, which reflect an average size for such units as 270 sq. ft., and follows the models set forth by comparable programs in other buildings; and

WHEREAS, Doe follows an established building model with a comparable allocation of residential, commercial, and community facility uses, which has been successful at other locations; and

WHEREAS, the applicant notes that the construction of 140 units at the site requires a certain minimum amount of floor area and efficient floor plates with access to light and air which, in turn, necessitates the requested building envelope; and

WHEREAS, however, since the site is within a C8-2 zoning district, which does not permit residential development as of right, the requested use waiver is required; and

WHEREAS, in addition to the programmatic needs, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site rests at the foot of a rock outcropping with a height of 50 feet; and (2) the history of uses at the site have resulted in surface and subsurface contamination and the resultant need for remediation; and

WHEREAS, as to the rock outcropping, the applicant has identified premium costs associated with rock removal and foundation work at the site; and

WHEREAS, the applicant represents that the rock condition makes development below grade infeasible and requires that facilities that would normally be provided below grade, such as mechanical space, cannot be provided below grade and must be provided on the first floor, which reduces the amount of first floor commercial space; and

WHEREAS, as to the history of use at the site, as noted the site has been occupied by an automotive repair facility and parking for many years; and

WHEREAS, accordingly, the applicant represents that an environmental analysis revealed that there are underground storage tanks and discharge piping at the site, in addition to other contaminants associated with the historic use of automotive repair and vehicle storage; and

WHEREAS, the applicant represents that these conditions require excavation and removal of underground storage tanks in accordance with applicable regulations; and

WHEREAS, the applicant has documented the premium costs associated with this process; and

WHEREAS, the applicant represents that any development of available floor area at the site would be burdened by these conditions; and

WHEREAS, the applicant notes that the site is one of only approximately seven within the 400-ft. radius which is not developed with at least a two-story building; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

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

WHEREAS, however, during the hearing process, the applicant analyzed an alternative of a six-story development with 100 units and determined that given the requirements of the funding sources, fewer units would be more expensive to operate and would not be financially viable; and

WHEREAS, the applicant also submitted an analysis which reflects that a re-use of the existing one-story garage building is not viable and that constructing a new building for a conforming use would not be viable due to the premium costs associated with the unique conditions of the site, including the rock outcropping and the inability to develop the site below grade; and

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

WHEREAS, as to residential use, the applicant states that the proposed building is located adjacent to an R7-1 zoning district and is adjacent and near to many residential buildings; and

WHEREAS, specifically there is one six-story and one four-story multiple dwelling building directly to the rear of the site on Decatur Avenue and there are at least two other multiple dwelling buildings south of the site on Webster Avenue within the C8-2 zoning district; and

WHEREAS, additionally, the applicant represents that there are a number of residential buildings, including an abandoned residential building across the street from the site; and

WHEREAS, the Board notes that the existing use of automotive use and truck rental is less compatible with adjacent

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residential uses; and

WHEREAS, as to bulk, the applicant represents that the proposed bulk is consistent with the permitted bulk for an as of right Use Group 4 community facility building in the C8-2 zoning district, which would be permitted a maximum 4.8 FAR; and

WHEREAS, specifically, a building with ten stories and a height of 93 feet could be built as of right; and

WHEREAS, the proposed buildings will have eight stories and a height of 80 feet; and

WHEREAS, because the six-story and four-story residential buildings at the rear of the site, with frontage on Decatur Avenue, are situated on top of the rock outcropping with a height of 50 feet, they appear much taller and have a height that is comparable or taller to that of the proposed buildings; and

WHEREAS, the applicant proposes to provide landscaping and an outdoor recreation area at the rear of the site; and

WHEREAS, as to the ground floor commercial use, the applicant notes that the proposed as-of-right commercial use on the first floor fits into the neighborhood character; and

WHEREAS, specifically, the site abuts a residential district with a C1-1 overlay on East Gun Hill Road; and

WHEREAS, as to parking, the applicant asserts that because of the Doe Fund's eligibility requirements that the units be reserved for low-income tenants, substantial car ownership is not anticipated and the 11 proposed parking spaces will be sufficient to serve staff, deliveries, and other service providers; and

WHEREAS, additionally, the applicant notes that the site is well served by public transportation including subway stops at 205th Street (D train), Gun Hill Avenue (2/5 trains), and Moshulu Parkway (4 train); a Metro North stop at Williamsbridge; and buses on Gun Hill Avenue (Nos. 30 and 28) and Webster Avenue (Nos. 55 and 41); and

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

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

WHEREAS, as discussed above, Doe requires a minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Doe to carry out the stated needs; and

WHEREAS, also, as discussed above, the applicant submitted an analysis of a building with fewer units and determined that it could not be supported financially; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; 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. 07BSA006X, dated December 18, 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within a C8-2 zoning district, the proposed construction of two eight-story mixed-use residential/commercial/community facility buildings, contrary to ZR § 32-10, *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 February 8, 2007"-(7) sheets; and *on further condition*:

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

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

THAT the parameters of the proposed building shall be: a total floor area of 92,699 sq. ft.; a residential floor area of 87,269 sq. ft.; a commercial floor area of 3,669 sq. ft.; a community facility floor area of 1,761 sq. ft.; a total FAR of 4.68; a street wall height of 70'-6"; and a total height of 80'-3" (without bulkhead);

THAT the internal floor layouts on each floor of the proposed building 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

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

262-06-BZ

CEQR #07-BSA-021Q

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

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

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

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Chris Wright.

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 July 25, 2007, acting on Department of Buildings Application No. 402442031, reads in pertinent part:

- “1. Proposed residential building is contrary to the minimum distance requirements between legally required windows and walls or lot line of Section 23-861 of the Zoning Resolution.
2. Proposed residential building is contrary to the street wall, height, and setback requirements pursuant to 23-633 of the Zoning Resolution.
3. Proposed residential building is contrary to the parking requirements pursuant to 25-23 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6B zoning district, the modification and conversion of an existing four-story manufacturing building to residential use, which does not comply with height, setback, street wall, and parking requirements and is contrary to ZR §§ 23-861, 23-633, and 25-23; and

WHEREAS, a public hearing was held on this application on March 13, 2007, after due notice by publication in the *City Record*, with continued hearings on June 5, 2007, July 17, 2007, and August 21, 2007, and then to decision on September 11, 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 5, Queens, recommends disapproval of this application, citing concerns about residential density and insufficient parking; and

WHEREAS, the site is located on the east side of 60th Lane, between Myrtle Avenue and 71st Avenue, within an R6B zoning district; and

WHEREAS, the site is long and irregularly-shaped with varying widths; it has a width of approximately 44.97 feet at its narrowest point on the 60th Lane frontage and a width of approximately 128.48 feet at the rear of the site; and

WHEREAS, the site extends to a depth of approximately 308 feet and has a lot area of 27,919 sq. ft.; and

WHEREAS, there is also a narrow portion of the site, occupied by a driveway with a width of 11'-3", running perpendicular to the rear of the site, which provides access to 71st Avenue; and

WHEREAS, the site is occupied by a four-story former factory building, which extends for almost the entire depth of the site and is built to the northern lot line; and

WHEREAS, the applicant proposes to convert the existing building into a 50-unit residential building; the plans include the demolition of a one-story portion at the rear of the building and a four-story portion at the front of the building; and

WHEREAS, the proposal includes the partial demolition (to create emergency vehicle access and room for parking) and reconstruction of the existing building, which results in a total floor area of 54,327 sq. ft. (1.95 FAR); and

WHEREAS, as to street wall, building height, and setback, the existing building height of 60'-2", without setback, is an existing non-complying condition (50 feet is the maximum height permitted in the zoning district and a 15'-0" setback is required at a height of 40 feet); and

WHEREAS, the street wall of 60'-2" will be maintained, but a waiver is also required for its location in relationship to the street, which does not match adjacent street walls; and

WHEREAS, the proposed penthouse at a height of 70 feet will increase the degree of non-compliance as to height; and

WHEREAS, the Board notes that the proposed building will maintain the existing distance between its side windows and the rear walls and lot lines of adjacent lots, but that this creates a new non-compliance due to the introduction of residential occupancy (a minimum distance of 30 feet is required between a legal window and the rear wall or rear lot line of adjacent lots); and

WHEREAS, as to parking, the applicant proposes to provide 24 parking spaces, which meet the minimum width requirement of 8'-6", and one parking space, which has a width of 8'-0"; zoning district regulations require that parking be provided for 50 percent of the 50 dwelling units, which is 25 spaces; and

WHEREAS, the original proposal provided for 55 units

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and 27 parking spaces; and

WHEREAS, the original proposal required the waiver for failure to provide the minimum distance between legally required windows and adjacent walls or lot lines as well as a waiver of the Building Code for failure to meet the requirement that at least eight percent of the building's total perimeter wall length be located at the street frontage; the request for a waiver of the Building Code was brought under BSA Cal. No. 59-07-A and was subsequently withdrawn; and

WHEREAS, the Board notes that the height and setback waivers are required because of the noted non-complying street wall and the redistribution of the demolished floor area to the top of the building; and

WHEREAS, further, the parking was reduced to below the required amount in order to provide sufficient clearance for emergency vehicles; and

WHEREAS, the applicant provided several iterations of the proposal throughout the hearing process, and revised the plans to reflect the demolition of the narrowest part of the building at the street frontage and to provide for additional frontage above the 60th Lane driveway, which reduced the total amount of perimeter wall and resulted in sufficient frontage to meet the Building Code requirement; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing historic building is obsolete and does not comply with zoning district regulations; and (2) the site is irregularly-shaped, with very limited frontage; and

WHEREAS, as to the existing building, the applicant states that the building, built in 1930, is a historic former factory, which was abandoned many years ago; and

WHEREAS, the configuration of the building and the constraints on access to the site are not compatible with the requirements for a modern factory and, further, the use is not permitted under the current zoning; and

WHEREAS, specifically, as to the position of the building on the site, the applicant notes that the front portion of the building is built to the northern lot line and it follows the angle of the lot along its southern side; and

WHEREAS, the applicant notes that the site and building extend in a perpendicular line behind the rear yards of the adjacent properties to the north and south and runs parallel to the properties on the east side; and

WHEREAS, accordingly, the site is flanked by a total of 25 rear yards on its north and south sides; and

WHEREAS, because of these condition, the windows along these the north and south walls do not all meet the 30 ft. required distance between legal windows and adjacent walls or lot lines; and

WHEREAS, the applicant notes that in order to comply with the legal window requirements, the entire front portion of the building and a portion of the rear building would need to be demolished; and

WHEREAS, during the hearing process, the applicant explored the option of demolishing portions of the front

building along the northern lot line to create small courtyards and provide for alternate means of access for light and air, but found these alternatives to be cost-prohibitive; and

WHEREAS, additionally, the applicant found that the structural integrity of the building would be compromised with additional demolition to the existing walls; and

WHEREAS, the Board notes that the height and setback are existing non-compliances; and

WHEREAS, the applicant proposes to increase the degree of non-compliance by adding a penthouse to the rear portion of the building to redistribute a portion of the floor area that is demolished; and

WHEREAS, additionally, in order to meet the Fire Department's requirement for emergency vehicle access at the front of the site, the applicant plans to demolish a portion of the front of the building and to maintain an open space in that area; and

WHEREAS, as noted, this setback of the building creates a new non-compliance as to the required street wall; and

WHEREAS, the applicant represents that due to the configuration of the site and the building and the building's position on the site, it is not feasible to provide all of the required parking spaces; and

WHEREAS, as to the parking requirement, the applicant will provide 24 spaces for 50 dwelling units and requires a waiver of one space; and

WHEREAS, the applicant agreed to demolish the building at the rear to provide additional room for parking; and

WHEREAS, the Board notes that the noted constraints do not support a re-use of the building that would be in compliance with all zoning district regulations; and

WHEREAS, as to the shape of the lot, as noted, the lot is long and narrow with a range of widths from 44.97 feet to 128.48 feet widths; and

WHEREAS, the applicant represents that this is the only such irregularly-shaped lot within a 400 sq. ft. radius of the site; and

WHEREAS, this condition, and the building's position on the site, results in varying distances between the windows on the southern portion of the building and adjacent buildings, some of which provide the required width and others which are insufficient; and

WHEREAS, specifically, the range in distances from legal windows to walls or rear lot lines varies from 14 feet to 40 feet across the southern portion of the site and none of the windows on the northern portion of the site can comply as the building is built on the lot line or to a maximum distance of eight feet from it; and

WHEREAS, the applicant notes that the rear windows and the majority of the windows on the upper floors can comply with the required distance; and

WHEREAS, the configuration of the lot and the building precludes compliance with the required 30 feet between residential windows; and

WHEREAS, the applicant has documented the premium construction costs associated with the demolition and

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reconstruction of the building; and

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

WHEREAS, the applicant submitted a feasibility study analyzing (1) a complying community facility scenario, (2) a complying residential development, and (3) the initial proposal for a 55-unit non-complying residential building; and

WHEREAS, the applicant concluded that complying scenarios would result in a loss, due to the unique conditions of the site; and

WHEREAS, the applicant concluded that the initial proposal would result in a reasonable return, but it required the additional waiver of the Building Code and an increased degree of non-compliance as to the required parking; and

WHEREAS, at hearing, the Board asked the applicant if it was possible to reduce the number of units below the revised proposal's 50; and

WHEREAS, the applicant provided an additional analysis of comparable buildings, which reflects that fewer apartments, with more floor area each, would not provide a reasonable rate of return at this site; and

WHEREAS, further, the applicant represents that a reduced number of apartments cannot generate the income required to offset the incremental costs incurred in addressing the site's physical conditions, specifically, costs associated with the demolition of the building to create an emergency access area and the other required demolition and reconstruction, which are not present on the typical building site; and

WHEREAS, the applicant represents that the addition of the penthouse is required to achieve a reasonable rate of return due to the construction costs associated with the partial demolition and reconstruction of the building and the other unique characteristics noted above; and

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

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

WHEREAS, as to the proposed use, the applicant notes that the site and surrounding area were zoned R6B to reflect the residential character of the neighborhood and that the factory use has been abandoned for many years; and

WHEREAS, the applicant notes that the proposed building complies with floor area and FAR regulations; and

WHEREAS, the proposal reflects a floor area of 54,327 sq. ft. (1.95 FAR), which is almost identical to the existing floor area; 55,838 sq. ft. (2.0 FAR) is the maximum permitted;

and

WHEREAS, the existing building has a floor area of 54,453 sq. ft. (1.95 FAR); and

WHEREAS, the Board notes that the applicant has placed the penthouse at the rear of the site, so as to minimize its visibility; and

WHEREAS, as to the creation of a courtyard and the setting back of the front wall, the applicant has improved emergency access to the building; and

WHEREAS, additionally, the demolition of the rear one-story building improves parking conditions and circulation at the site; and

WHEREAS, as to the windows, the Board has required that the windows on the north side of the building, which are on the lot line, remain inoperable and other means of light and ventilation must be provided there, as noted on the plans; and

WHEREAS, this will eliminate the potential for encroachments, such as air conditioners, into adjacent rear yards and maintain privacy with adjacent properties as well as contain noise; and

WHEREAS, the applicant notes that the rear yards of adjacent buildings contribute to the 30'-0" distance from legal windows; and

WHEREAS, the proposed demolition at the front and rear of the building will increase the depth of the front and rear yards and the amount of open space; and

WHEREAS, the Board notes that since the number of dwelling units was reduced from 55 to 50 and because of the demolition at the rear of the building, the applicant is able to provide at least 24 parking spaces, which is only one less than what is required; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby uses and that the changes to the existing building envelope are compatible with the surrounding area; 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, the Board notes that the applicant initially stated that a 55-unit building was required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site and the existing building that require portions of the building to be demolished and reconstructed, but disagrees that the initial plan was required to make the building feasible; and

WHEREAS, accordingly, the applicant revised the proposal to eliminate the waiver of the Building Code and decreased the degree of non-compliance as to parking by reducing the number of dwelling units, as noted above; and

WHEREAS, as noted, the applicant also increased the frontage and demolished more of the building, in order to

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improve access and to reflect a more appropriate distribution of floor area on the site; and

WHEREAS, through a redesign of the building, the applicant also reduced the number of non-complying windows to 11 and agreed to find alternate means of light and ventilation for remaining ones which are adjacent to residential rear yards; and

WHEREAS, the Board notes that, although the current proposal increases the degree of non-compliance as to height for a portion of the building, it increases the amount of open space and provides greater vehicle access and circulation; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to offset the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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 (EAS) CEQR No. 07BSA021Q, dated September 26, 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an R6B zoning district, the modification and conversion of an existing four-story manufacturing building to residential use, which does not comply with height, setback, street wall, and parking requirements and is contrary to ZR §§ 23-861, 23-633, and 25-23, *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 August 7, 2007” – six (6) sheets and “Received August 30, 2007” – five (5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: five stories; a total floor area of 54,327 sq. ft. (1.95 FAR); a maximum total height of 70 feet; and a minimum of 25 parking spaces;

THAT required light and air will be approved by DOB; THAT the driveway on 71st Avenue shall be for egress only;

THAT signs shall be posted at the entrance/exits stating that there be no standing or parking in those areas;

THAT all windows on the lot line shall be inoperable and an alternate means of ventilation is required;

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, September 11, 2007.

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 – 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 August 28, 2006, acting on Department of Buildings Application No. 302211782, reads in pertinent part:

- “1. Proposed floor area contrary to ZR 23-141.
2. Proposed open space ratio contrary to ZR 23-141.

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3. Proposed side yard contrary to ZR 23-461.
4. Proposed rear yard contrary to ZR 23-47.
5. Proposed lot coverage is contrary to ZR 23-141b"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 6, 2007, after due notice by publication in *The City Record*, with continued hearings on April 17, 2007, May 15, 2007, June 5, 2007, July 10, 2007, and August 7, 2007, and then to decision on September 11, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony at hearing and in writing in opposition to the application (the "Opposition"), citing concerns about the proposal not being compatible with neighborhood character and whether it constituted an enlargement; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue P and Quentin Road; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,230.7 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,230.7 sq. ft. (0.45 FAR) to 5,022.2 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 75.81 percent to 56.1 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-4" and the complying side yard of 9'-6" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will reduce the rear yard from 30'-0" to 20'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, the applicant proposes to increase the lot coverage from 24.35 percent to 43.9 percent (35 percent is the maximum permitted); and

WHEREAS, at hearing, the Board asked the applicant to address two issues: (1) which portions of the existing home will be retained and (2) neighborhood character; and

WHEREAS, as to the amount of the building that will be retained, the applicant identified the portions of the building which would be retained and noted that DOB had accepted the plans as an Alteration 1 application; and

WHEREAS, the Board asked the applicant specifically to address how certain floor joists would be retained; and

WHEREAS, the applicant responded that some foundation walls will support floor joists and not walls; and

WHEREAS, as to neighborhood character, the Board noted there are several blocks in the vicinity of the home, occupied by a majority of homes with similar features including both front and rear yards with depths of 30'-0" and a raised or terraced front yard; and

WHEREAS, at hearing, the Board asked the applicant to provide information about the depths of front yards in the noted area; and

WHEREAS, initially, the applicant asserted that since a front yard waiver was not being requested (a 15'-0" front yard is the minimum required and an 18'-8" front yard is proposed), the Board did not have authority to review the front yard and thus the context for front yards was not relevant to the Board's findings; and

WHEREAS, the Board agrees that the applicant has 0.05 FAR of available floor area and could build an as of right enlargement into the existing front yard; and

WHEREAS, however, the Board disagrees with the applicant's interpretation of the Board's authority under the special permit and asserts that it may request information about neighborhood character and evaluate a proposal accordingly, regardless of whether a particular waiver is sought; and

WHEREAS, specifically, ZR § 73-622 provides that "the Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located" and "The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area"; and

WHEREAS, ultimately, the applicant submitted block front plans of adjacent homes, which reflect the front yard depths of approximately 30'-0" on both sides of East 28th Street on the subject block except for at the corner lots; and

WHEREAS, the applicant submitted information which reflects that at least two other homes in the vicinity have yards with depths ranging from 23'-0" to 25'-0"; and

WHEREAS, further, the applicant notes, and the Board agrees, that the Opposition incorrectly included the depth of the sidewalk in measurements of nearby front yards; and

WHEREAS, additionally, the Opposition asserted that the applicant erred by identifying the yards with depths of 4'-0" on the corner lots as front yards, rather than side yards; and

WHEREAS, the Board agrees with the applicant that

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the noted yards are front yards with depths of 4'-0"; and

WHEREAS, during the hearing process, the applicant increased the depth of the proposed front yard from 17'-8" at its shallowest point and 19'-0" at its deepest point to 18'-8" and 20'-0", respectively; and

WHEREAS, the Board notes that a majority of the front yard will have a depth of 20'-0"; and

WHEREAS, the applicant proposes to provide a stepped front wall to be compatible with the neighborhood character; and

WHEREAS, at the Board's direction, the applicant also ensured that the roof lines comply with all height and sky exposure plane regulations; and

WHEREAS, the applicant also modified the plans to appropriately indicate which portions of the attic would be considered floor area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, rear yard, and lot coverage, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 25, 2007"-(6) sheets and "July 31, 2007-(6) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 697 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 5,022.2 sq. ft., a total FAR of 1.0, a perimeter wall height of 21'-0", a total height of 35'-0", a front yard of 18'-8", side yards of 3'-4" and 9'-6", a rear yard

of 20'-0", and open space of 2,803.8 sq. ft., as illustrated on the BSA-approved plans;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

291-06-BZ

CEQR #07-BSA-035Q

APPLICANT – Paul Bonfilio, AIA., for 6860 Austin Realty Corp., owner.

SUBJECT – Application November 2, 2006 – Special Permit (§73-44) to allow the reduction in the number of required parking spaces for an enlargement to an existing community facility building (Ambulatory Diagnostic/Treatment Facility). The Premises is located in a C8-2 zoning district. The proposal is contrary to Section 36-21.

PREMISES AFFECTED – 68-60 Austin Street, Austin Street, between Yellowstone Boulevard and 69th Road, Block 3234, Lot 29, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Tarek M. Zeid.

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 March 28, 2006, acting on Department of Buildings Application No. 402307302, reads in pertinent part:

“Provide required amount of parking spaces for new enlargements as per Section 36-21 ZR”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C8-2 zoning district, a reduction in the required number of accessory parking spaces for an existing mixed-use ambulatory diagnostic and treatment/office/retail building from 90 to 58, contrary to ZR

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§ 36-21; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

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

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Austin Street, between Yellowstone Boulevard and 69th Road, and has a lot area of 18,000 sq. ft.; and

WHEREAS, the site is currently occupied by a 36,645.2 sq. ft. five-story mixed-use building, with 90 required accessory parking spaces; and

WHEREAS, specifically, the uses at the site are as follows: (1) parking for 85 attended spaces in the cellar level; (2) retail use (Use Group 6), offices (Use Group 6) and ambulatory diagnostic and treatment use (Use Group 4) on the first floor; and (3) offices (Use Group 6) on the second through fifth floors; and

WHEREAS, the Certificate of Occupancy reflects that five parking spaces are required to be located in an outdoor area on the first floor, which is currently being used for outdoor restaurant seating; and

WHEREAS, the applicant represents that there are plans to enlarge the existing building; and

WHEREAS, however, the Board analyzed the request for the parking waiver based on the current approved uses at the site and notes that any enlargement of the building must be approved by DOB for compliance with all zoning district regulations; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C8-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic and treatment facilities and the noted Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, the total number of required parking spaces for all uses at the site is 90; and

WHEREAS, the existing ambulatory diagnostic/treatment facility (Use Group 4) on the first floor occupies 3,960 sq. ft.; at a rate of one required parking space per 400 sq. ft. of floor area, 10 parking spaces are required for this use; and

WHEREAS, the remaining office uses on the first through fifth floors are classified as Use Group 6, in parking category B1 and occupy 21,486.20 sq. ft.; at a rate of one required parking space per 400 sq. ft. of floor area, 54 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 64; as noted, the special permit allows for a 50 percent reduction for qualifying spaces and this would reduce the required parking for these uses to 32 spaces; and

WHEREAS, the applicant represents that an additional 26 parking spaces are required for other uses at the site, which are not eligible for the special permit; these 26 spaces will remain; and

WHEREAS, the applicant proposes to provide a total of 58 parking spaces; and

WHEREAS, the Board notes that the applicant proposes to maintain 90 parking spaces, but only 58 are required to support the existing uses at the building; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic and treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response to the Board's concerns regarding parking, the applicant prepared a parking analysis based upon a transportation survey for the existing uses at the site and studied a 400-ft. radius; and

WHEREAS, the analysis revealed that the parking structure is underutilized and that at the busiest time of the day, there is a demand for only 19 parking spaces; during a peak hour, five cars entered the site; and

WHEREAS, the applicant completed a survey of the surrounding area and found that there are a number of other parking structures with available space; and

WHEREAS, as to public transportation, the applicant represents that the site is well-served by (1) a New York City Transit bus on Austin Street with a bus stop directly in front of the building's entrance, and (2) the 71st Avenue/Continental subway stop is three blocks from the site and provides access to the E/F/G/R trains; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, based upon the above, 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 §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07BSA035Q, dated August 17, 2007; 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, 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 under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-44 and 73-03, to permit, within a C8-2 zoning district, a reduction in the required number of accessory parking spaces for an existing mixed-use ambulatory diagnostic and treatment/office/retail building from 90 to 58, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received November 2, 2006" -(11) sheets and "Received August 18, 2007"-(1) sheet and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 58 attended parking spaces shall be provided in the accessory parking lot for the existing uses;

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

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

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

THAT the 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 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, September 11, 2007.

325-06-BZ

CEQR #07-BSA-047M

APPLICANT – Eric Palatnik, P.C., for Escava Brothers, owners; Ludlow Fitness, lessee.

SUBJECT – Application December 15, 2006 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment to be located on the second floor of the building under construction. The proposal is contrary to §32-00. C6-1 district.

PREMISES AFFECTED – 100 Delancey Street, between Ludlow Street and Essex Street, Block 410, Lot 71, Borough of Manhattan.

COMMUNITY BOARD #1M

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 Manhattan Borough Commissioner, dated August 29, 2007, acting on Department of Buildings Application No. 103623571, reads in pertinent part:

"A physical culture establishment is not permitted as of right in a C6-1 (R7 equivalent). This is contrary to ZR 22-00 & ZR 32-10"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the establishment of a physical culture establishment (PCE) on the second floor of a six-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

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

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Delancey Street and Ludlow Street; and

WHEREAS, the site is occupied by a six-story commercial building, which will be altered and reconstructed; and

WHEREAS, the PCE will occupy approximately 5,069 sq. ft. of floor area on the second floor; and

WHEREAS, the applicant represents that the PCE will offer facilities for classes and instruction in body-building, weight reduction, aerobics, and general physical improvement; and

WHEREAS, the PCE will be operated as Ludlow Fitness; and

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WHEREAS, the proposed hours of operation are: Monday through Friday, 5:30 a.m. to 12:00 a.m. and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA047M, dated June 7, 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, the Board has determined that the operation of the PCE will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the establishment of a physical culture establishment on the second floor of a six-story building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 17, 2007"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 21,

2017;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

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10-07-BZ

APPLICANT – Kenneth Philogene, for George Smirnov, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to construct a two story, one family home on an undersized vacant lot with less than the total required side yards (§23-48) in an R3-1 zoning district.

PREMISES AFFECTED – 118 Graham Boulevard, south side of Graham Boulevard, Block 3768, Lot 23, Borough of Staten Island.

COMMUNITY BOARD #2SI

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 decisions of the Staten Island Borough Commissioner, dated January 8, 2007 and August 10, 2007, acting on Department of Buildings Application No. 500837936, read in pertinent part:

“Proposed one foot side yard for detached one family residential building in R3-1 zoning district is not permitted as of right (ZR 23-49)

Applicant seeks waiver of required off-street parking contrary to ZR 25-22 where in the Borough of Staten Island, two accessory off-street parking spaces shall be provided for each single-family residence”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-1 zoning district within a Lower Density Growth Management Area (LDGMA), the proposed construction of a two-story with attic single-family home that does not provide the required side yard or off-street parking spaces and is contrary to ZR §§ 23-49 and 25-22; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2007, and then to decision on September 11, 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 disapproval of this application; and

WHEREAS, the site is located on the south side of Graham Boulevard, between Baden Place and Colony Avenue, in an R3-1 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of approximately 100 feet, and a total lot area of approximately 2,000 sq. ft.; and

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

WHEREAS, the applicant represents that a deed of record could not be located for the adjacent lot, Lot 22, but existing records reflect that the subject lot has been owned independently from all adjacent lots since approximately 1927;

and

WHEREAS, the Board notes that DOB has accepted the lot as a pre-existing undersized lot; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home without any off-street parking spaces; and

WHEREAS, the proposed home will have the following complying parameters: 1,000 sq. ft. of floor area (0.5 FAR), lot coverage of 29 percent, a wall height of 21'-0", a total height of 28.33 feet, a front yard of 27'-0", and a rear yard of 30'-0"; and

WHEREAS, however, the applicant proposes to provide one side yard with a width of 6'-0" (two side yards with widths of 5'-0" each are the minimum required); and

WHEREAS, additionally, the LDGMA regulations require two off-street parking spaces, which are not permitted to be located in the front yard; and

WHEREAS, the applicant states that side yard and parking relief is necessary, for reasons stated below; thus, the instant application was filed; and

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

WHEREAS, the Board notes that there are approximately 87 vacant lots within a 400-ft. radius of the site, of which 17 (or 19 percent) have widths of 20 feet or less; and

WHEREAS, further the Board notes, that the majority of vacant lots have widths of at least 30 feet and can thus meet the side yard requirement of two side yards with widths of 5'-0" each and still provide a home with a reasonable width of 20 feet; 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 lot width of 20 feet cannot feasibly accommodate as of right development; and

WHEREAS, the applicant states that the building would have an exterior width of only ten feet 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, as to parking, because of the site's narrow width, a driveway cannot be accommodated at the side of the house; and

WHEREAS, accordingly, parking would be required to be either in the cellar or in a garage at grade; and

WHEREAS, additionally, the applicant represents that the site is located within a flood plane and therefore it is infeasible to provide parking below grade; and

WHEREAS, the applicant submitted plans, which reflect the constraints associated with providing two off-street parking spaces on such a narrow site with a modestly sized home, particularly since there is no option to provide parking in the

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side yard or in the front yard; and

WHEREAS, the Board notes that open parking in the front yard is not permitted in the LDGMA; and

WHEREAS, accordingly, since parking cannot be provided at the side or front of the home or feasibly within the garage scenarios, the applicant does not propose to provide any off-street parking; 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 side 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 notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations; and

WHEREAS, further, the applicant represents that there is not a context for homes with a width of only 10'-0", such as the as of right building; and

WHEREAS, initially, the applicant proposed to provide one side yard with a width of 5'-0" on its eastern side and one side yard with a width of 1'-0" on its western side; and

WHEREAS, the applicant suggested that since the lot on its western side is comparable in size, it has the same constraints as to width and that a narrower side yard along that lot line would provide the opportunity for that lot to be developed as the mirror image of the subject building, with one complying side yard and one lot line condition; and

WHEREAS, the applicant noted that two semi-detached homes, each with one 5'-0" side yard could be built as of right on a lot with a width of 40'-0" in the zoning district; and

WHEREAS, the Board agrees that the placement of the building so that it provides one complying side yard and one lot line condition is compatible with future development of the adjacent similarly under-sized lot; and

WHEREAS, accordingly, the applicant revised the plans to provide for one side yard with a width of 6'-0" on its eastern side and no side yard on its western side; and

WHEREAS, the proposed lot line wall on the building's western side will not have any fenestration so as to be compatible with any future development of the adjacent site; and

WHEREAS, as to parking, the applicant initially proposed to provide one parking space in the cellar and one parking space in the front yard; and

WHEREAS, however, the applicant determined that due to the site conditions, it would be infeasible to provide a cellar; and

WHEREAS, additionally, as noted above, the Board notes that the LDGMA does not permit parking in the front yard and the applicant would require a waiver to do so; and

WHEREAS, the Board notes that there are a large number of vacant lots in the area and there is ample on-street

parking; 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 historic lot dimensions; and

WHEREAS, as noted above, the applicant complies with all R3-1 zoning district and LDGMA regulations except for one required side yard and required off-street parking; 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 R3-1 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story with attic single-family home that does not provide the required side yard or off-street parking spaces and is contrary to ZR §§ 23-49 and 25-22; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 30, 2007"– (4) sheets and "August 27, 2007"– (5) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,000 sq. ft. of floor area (0.5 FAR), a wall height of 21'-0", a total height of 28.33 feet, and one side yard with a width of 6'-0", as per the BSA-approved plans;

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 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, September 11, 2007.

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54-07-BZ

APPLICANT – Robert Akerman, Esq., for Ella Weiss, owner.

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

PREMISES AFFECTED – 1776 East 26th Street, west side of 26th Street, between Avenue R and Quentin Road, 200' north of Avenue R, Block 6808, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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 January 26, 2007, acting on Department of Buildings Application No. 302292524, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on May 8, 2007, after due notice by publication in *The City Record*, with continued hearings on June 12, 2007, July 17, 2007, and August 14, 2007, and then to decision on September 11, 2007; and

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

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

WHEREAS, certain neighbors provided testimony at hearing and in writing in opposition to the proposal, citing concerns that the proposal is not compatible with neighborhood character and questioned whether it constituted an enlargement; and

WHEREAS, the Madison Marine Civic Association provided testimony in opposition to the proposal, citing concerns about neighborhood character; and

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue R and Quentin Road; and

WHEREAS, the subject lot has a lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,488 sq. ft. (0.37 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,488 sq. ft. (0.37 FAR) to 4,114 sq. ft. (1.03 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 21 percent to 44 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-10" and provide second side yard to 8'-0" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will reduce the rear yard from 44'-4" to 21'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, additionally, the applicant notes that the existing home is small, with floor plates of approximately 829 sq. ft., and that the plans include as much of it that can support an enlargement; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of walls and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, further, the Board notes that the applicant is increasing the depth of the front yard from a non-complying 10'-0" to a complying 15'-0"; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project

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will not interfere with any pending public improvement project; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 28, 2007"-(11) sheets and "September 10, 2007"-(2) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic shall be limited to 650 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,114 sq. ft., a total FAR of 1.03, side yards of 2'-10" and 8'-0", a rear yard of 21'-0", a perimeter wall height of 21'-7", a total height of 35'-0", and lot coverage of 44 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 28, 2007" plan sheets 10, 11, 12, 15, 16 & 18 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

72-07-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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 March 5, 2007, acting on Department of Buildings Application No. 302311479, reads in pertinent part:

"The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the lot coverage and open space and is contrary to Section 23-141 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution"
5. Creates non-compliance with respect to perimeter wall height by exceeding the permitted maximum height of Section 23-631 of the Zoning Resolution"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on May 15, 2007, after due notice by publication

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in *The City Record*, with continued hearings on June 12, 2007, July 17, 2007, and August 14, 2007, and then to decision on September 11, 2007; and

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

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

WHEREAS, certain neighbors provided testimony at hearing in opposition to the proposal, citing concerns that the home would potentially later be converted to a two-family home, which would be out of character with the neighborhood; and

WHEREAS, the subject lot is located on the east side of East 26th Street, between Avenue S and Avenue T; and

WHEREAS, the subject lot has a lot area of 3,221 sq. ft., and is occupied by a single-family home with a floor area of 1,245 sq. ft. (0.39 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,245 sq. ft. (0.39 FAR) to 3,102 sq. ft. (0.96 FAR); the maximum floor area permitted is 1,610.5 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the perimeter wall height from 20'-6" to 22'-6" along the front wall and 24'-0" along the south side of the building (a perimeter wall with a height of 21'-0" is the maximum permitted, except as per ZR § 73-622); and

WHEREAS, the proposed enlargement will increase the lot coverage from 21 percent to 43 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 2'-1" and provide a second side yard of 8'-0" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will reduce the rear yard from 46'-9" to 20'-0" (the minimum rear yard required is 30'-0"); and

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

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of foundation, walls, and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, at hearing, the Board asked the applicant to confirm that the proposed perimeter wall height, which exceeds the maximum height of 21'-0" permitted in the zoning district, was lower than that of the adjacent semi-detached building; and

WHEREAS, the applicant provided a reconsideration

from DOB which states that the noted adjacent building's perimeter wall on the street front is measured from the top of the sloping portion of its flat roof, behind the decorative mansard roof, and has a height of 25'-10"; and

WHEREAS, the Board accepts this as the height of the perimeter wall of the adjacent building on the street front and agrees that the proposed perimeter wall height of 22'-6" along the front wall and 24'-0" along the turret portion of the south wall are within the parameters for perimeter walls set forth in ZR § 73-622; and

WHEREAS, specifically, the Board notes that the increased the perimeter all height along the street front to 22'-6" is limited and is less than the adjacent perimeter wall height, as per DOB; and

WHEREAS, further, the proposed perimeter wall height of 24'-0" is confined to the turret portion of the south side of the building facing the perimeter wall with a height of 25'-10" on the adjacent property; and

WHEREAS, at hearing, the Board asked the applicant to confirm whether any of the proposed turret space would be calculated as floor area; and

WHEREAS, the applicant responded that the turret area is walled off and not accessible and therefore does not count as floor area; and

WHEREAS, further, the Board notes that the attic floor area computation, which includes all attic space with a height of 5'-0" or greater, will be as approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 29, 2007"-(10) sheets, "July 3, 2007"-(1) sheet and "July 31, 2007"-(1) sheet; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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THAT the floor area in the attic shall be limited to 352 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,102 sq. ft., an FAR of 0.96, side yards of 2'-1" and 8'-0", a rear yard of 20'-0", a perimeter wall height of 22'-6" at the front of the building and 24'-0" along the turret portion of the south wall, a total height of 35'-0", and lot coverage of 43 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received May 29, 2007" plan sheets 11, 12, 13, 19, 19-A and 20 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT the attic floor area shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

98-07-BZ

APPLICANT – Eric Palatnik, P.C., for Yuri Gokhberg, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); rear yard (§23-47) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 67 Amherst Street, north of Hampton Avenue, south of Shore Boulevard, Block 8727, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 April 4, 2007, acting on Department of Buildings Application No. 302289878, reads in pertinent part:

“Proposed conversion of two-story one-family dwelling Use Group 1 in R3-1 zoning district:

1. Proposed floor area ratio is contrary to ZR 23-141(b).
2. Proposed open space is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard is contrary to ZR 23-47 Minimum required: 30' Proposed: 20'
5. Proposed side yards are contrary to ZR 23-461”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on July 24, 2007, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2007, and then to decision on September 11, 2007; and

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

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

WHEREAS, the Manhattan Beach Civic Association provided testimony in opposition to the proposal, citing concerns about whether the proposal constitutes an enlargement; and

WHEREAS, the subject lot is located on the west side of Amherst Street, between Hampton Avenue and Shore Boulevard; and

WHEREAS, the subject lot has a lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,570 sq. ft. (0.64 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,570 sq. ft. (0.64 FAR) to 3,713.93 sq. ft. (0.92 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 35 percent to 38.8 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-7" and the existing complying side yard to 11'-2" (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying rear yard of 18'-3" (the

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minimum rear yard required is 30'-0"); and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of walls and floor joists will be retained; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, additionally, the Board asked the applicant to confirm that the proposed home did not encroach into the sky exposure plane; and

WHEREAS, in response, the applicant submitted a reconsideration from DOB stating that the proposed envelope does not encroach into the sky exposure plane, pursuant to ZR § 23-631; and

WHEREAS, at hearing, the Board asked the applicant to explain why the initially-proposed 1.1 FAR was required; and

WHEREAS, the applicant responded that the floor area was initially calculated at 4,431.1 sq. ft. (1.1 FAR) because a large portion, 1,363.4 sq. ft., of the lower level met the definition of a basement (more than 50 percent of the height is above grade) and was counted as floor area; and

WHEREAS, the applicant subsequently modified the plans to lower a portion of the lower level so that only 653.48 sq. ft. are within the parameters of a basement and count as floor area; and

WHEREAS, the revised plans reflect the distinction between cellar space and basement space; and

WHEREAS, additionally, the applicant notes that there are portions of the second floor which are below the pitched roof and have heights of 5'-0" to 8'-0" and could be considered attic bonus floor area but are included in the total FAR calculation; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

§§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, rear yard, and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 7, 2007"-(7) sheets and "August 29, 2007"-(5) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar portion of the lower level;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,713.93 sq. ft., a total FAR of 0.92, side yards of 3'-7" and 11'-2", a rear yard of 18'-3", a perimeter wall height of 21'-0", a total height of 33'-0", and lot coverage of 38.8 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 7, 2007" plan sheets A1-2, A-2, A-3, A-4, A-9 and A-10 shall be retained;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

99-07-BZ

APPLICANT – Eric Palatnik, P.C., for Orkin Arkadly, owner.

SUBJECT – Application April 24, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 170 Girard Street, north of Oriental Boulevard, south of Hampton Avenue, Block 8749, Lot 271, Borough of Brooklyn.

COMMUNITY BOARD#15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 4, 2007, acting on Department of Buildings Application No. 302289869, reads in pertinent part:

“Proposed conversion of two-story one-family dwelling Use Group 1 in R3-1 zoning district:

1. Proposed floor area ratio is contrary to ZR 23-141(b).
2. Proposed open space is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141(b).
4. Proposed rear yard is contrary to ZR 23-47
Minimum required: 30’
Proposed: 20’’; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; 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 hearings on July 24, 2007 and August 21, 2007, and then to decision on September 11, 2007; and

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

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

WHEREAS, the Manhattan Beach Civic Association provided testimony in opposition to the proposal, citing concerns about whether the proposal constitutes an enlargement and whether the perimeter wall height complies with zoning district regulations; and

WHEREAS, the subject lot is located on the west side of Girard Street, between Hampton Avenue and Oriental Boulevard; and

WHEREAS, the subject lot has a lot area of 8,320 sq. ft., and is occupied by a single-family home with a floor area of 4,233 sq. ft. (0.50 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 4,233 sq. ft. (0.50 FAR) to 7,579.77 sq. ft. (0.92 FAR); the maximum floor area permitted is 4,160 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will increase the lot coverage from 29.16 percent to 47.69 percent (a maximum lot coverage of 35 percent is permitted); and

WHEREAS, the proposed enlargement will reduce the rear yard from 33’-3’’ to 20’-0’’ (the minimum rear yard required is 30’-0’’); and

WHEREAS, the enlargement of the building into the rear yard is not located within 20’-0’’ of the rear lot line; and

WHEREAS, at hearing, the Board asked the applicant to revise the drawings to more clearly reflect which structural elements of the existing home would be retained; and

WHEREAS, in response, the applicant revised the drawings to reflect which elements would be retained; and

WHEREAS, the applicant also noted that DOB issued an alteration permit, rather than a new building permit for the work; and

WHEREAS, the Board notes that a determination from DOB that construction constitutes an alteration rather than new construction is not dispositive to the Board, and that it may consider other factors when establishing whether the construction constitutes an enlargement permitted pursuant to ZR § 73-622; and

WHEREAS, the Board has reviewed the revised plans and has determined that a sufficient amount of foundation, walls and floor joists will be retained and used for structural purposes; and

WHEREAS, the Board notes that DOB will confirm that the noted portions of the existing home are retained; and

WHEREAS, additionally, the Board asked the applicant to confirm that the proposed perimeter wall was complying since the Board does not have the authority to waive perimeter wall height; and

WHEREAS, the Board notes that DOB will confirm that the perimeter wall height complies with zoning district regulations; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall

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substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 7, 2007"–(15) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar portion of the lower level;

THAT the floor area attributed to the attic shall be limited to 111.69 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 7,579.77 sq. ft., a total FAR of 0.91, a rear yard of 20'-0", a perimeter wall height of 21'-0", a total height of 35'-0", and lot coverage of 47.69 percent, as illustrated on the BSA-approved plans;

THAT DOB shall confirm that all portions of the existing building noted to be retained on the BSA-approved plans marked "Received August 7, 2007" plan sheets A1-2, A1-3, A-2, A-4, A-10, A-11 and A-11-2 shall be retained;

THAT DOB shall confirm that the perimeter wall height complies with zoning district regulations;

THAT the use and layout of the cellar shall be as approved by DOB;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

101-07-BZ

APPLICANT – Harold Weinberg, P.E., for Moshe Blumenkranz, owner.

SUBJECT – Application April 26, 2007 – Special Permit (§73-622) for the enlargement of an existing single family detached residence. This application seeks to vary open space and floor area (§23-141) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2306 Avenue M, south side, 40' east of East 23rd Street, between East 23rd and East 24th Streets, Block 7627, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

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 April 20, 2007, acting on Department of Buildings Application No. 302309945, reads in pertinent part:

"The proposed enlargement of the existing one-family residence in an R2 zoning district:

1. Creates a new non-compliance with respect to floor area ratio exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates a new non-compliance with respect to the open space ratio and is contrary to Section 23-141 of the Zoning Resolution.
3. Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 & 54-31 of the Zoning Resolution.;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side yards, contrary to ZR §§ 23-141, 23-461, and 54-31; and

WHEREAS, a public hearing was held on this application on June 19, 2007, after due notice by publication in *The City Record*, with continued hearings on July 17, 2007 and August 14, 2007, and then to decision on September 11, 2007; and

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

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

WHEREAS, City Council Member Michael C. Nelson submitted testimony in opposition to this application, citing concerns about potential impact to adjacent properties; and

WHEREAS, a neighbor provided testimony at hearing and in writing in opposition to this application, citing concerns about neighborhood character and the potential impact the proposed rear yard would have on the adjacent property at the rear; and

WHEREAS, specifically, the neighbor contends that (1) the application is not eligible for a special permit pursuant to § 73-622; (2) the applicant has not provided sufficient information; (3) the proposed enlargement will alter the neighborhood character; and (4) there is an ongoing dispute over the ownership of a portion of the subject site, which prevents the Board from acting; and

WHEREAS, the subject site is located on the south side of Avenue M, between East 23rd Street and East 24th Street; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a

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floor area of 2,681.6 sq. ft. (0.67 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,681.6 sq. ft. (0.67 FAR) to 3,519.8 sq. ft. (0.88 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 109.7 percent to 61.6 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard of 3'-10 1/2" and will provide a 8'-0" side yard at the rear of the home (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement, which is entirely at the rear of the existing home, will reduce the rear yard from 33'-3" to 3'-0"; and

WHEREAS, the Board notes that sites located within the subject zoning district, which are within 100 feet of the intersection of two street lines are not required to provide rear yards, pursuant to ZR § 23-541; and

WHEREAS, additionally, the Board notes that sites located on the short dimension of the block with a width of 230 feet or less are not required to provide rear yards within 100 feet of the front lot line, pursuant to ZR § 23-542; and

WHEREAS, the applicant represents and has provided a 200-ft. radius diagram to support that the site is within 100 feet of the intersection and fronts on the short dimension of the block which measures approximately 200 feet in width; and

WHEREAS, accordingly, the Board notes that, pursuant to ZR §§ 23-541 and 23-542, there is no requirement for a rear yard for this site; and

WHEREAS, as to the absence of a rear yard with a minimum depth of 20'-0", the Board notes that the provision of ZR § 73-622 which states that "any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*" relates to required rear yards and, as noted, there is no required rear yard at this site; and

WHEREAS, thus, the Board agrees with the applicant that since no rear yard is required pursuant to ZR §§ 23-541 or 23-542, the yard with a depth of 3'-0" along the rear lot line is within the parameters set forth in the special permit; and

WHEREAS, as to the sufficiency of the application, the applicant has submitted information about the proposal, including a discussion of other nearby homes with non-complying FAR, that is comparable to information the Board has accepted in other cases; and

WHEREAS, accordingly, the Board has determined that it has sufficient information to evaluate the required findings; and

WHEREAS, as to the neighborhood character finding, the Board notes that under two separate sections of the ZR, sites similarly located within the subject zoning district either within 100 feet of the intersection of two street lines or on the short dimension of the block are not required to

provide rear yards; and

WHEREAS, thus, the Board finds that the proposed absence of a rear yard was contemplated by the ZR and the subject site meets the criteria, in two separate instances, for the rear yard exception; and

WHEREAS, the Board notes that the proposed enlargement is entirely at the rear of the existing home; and

WHEREAS, further, the Board notes that a one-story garage or shed would be permitted to be built to the rear lot line as of right and that a number of properties in the vicinity have such a structure built at or near to the rear lot line, including both properties adjacent to the subject site; and

WHEREAS, the proposed enlargement is one-story, with a maximum height of 16'-0"; and

WHEREAS, at hearing, the Board asked the applicant if the proposed enlargement could be reconfigured so as to occupy two floors and, thus, reduce the amount of lot coverage and increase the size of the rear yard; and

WHEREAS, the applicant responded that the plan for the enlargement, to accommodate a kitchen, dining room, and family room, would not be feasible to be divided between the first and second floors; and

WHEREAS, however, during the hearing process, the applicant agreed to increase the size of the rear yard from 0'-0" to 3'-0"; and

WHEREAS, the applicant represents that the neighbor at the rear has a 4'-6" side yard abutting the subject property's rear lot line (an existing non-complying condition); and

WHEREAS, the Board notes that with the proposed 3'-0" rear yard, there will be a total of 7'-6" between the two homes; and

WHEREAS, additionally, in an effort to maintain privacy, the applicant agreed not to construct any windows on the rear wall of the enlargement and to plant shrubbery along the rear lot line; and

WHEREAS, the applicant submitted a shadow study, which reflects that the shadows cast by the enlargement at sunset and sunrise fall entirely outside of the boundaries of the adjacent property at the rear; and

WHEREAS, as to bulk, the applicant represents that the homes within the vicinity of the subject home have floor area ranging from 0.43 FAR to 1.11 FAR; and

WHEREAS, the Board notes that the proposed 0.88 FAR is within that range; and

WHEREAS, as to the adverse possession claim, the Board notes that ownership issues may be adjudicated in other forums and are outside of its jurisdiction; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and side yards, contrary to ZR §§ 23-141, 23-461, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 31, 2007"-(12) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,519.8 sq. ft., a total FAR of 0.88, a rear yard of 3'-0", one side yard of 3'-10 1/2", and one side yard of 8'-0", as illustrated on the BSA-approved plans;

THAT shrubbery shall be planted and maintained along the rear lot line, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, September 11, 2007.

112-07-BZ

CEQR #07-BSA-079K

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

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 5, 2007, acting on Department of Buildings Application No. 302334034, reads in pertinent part:

“Proposed plans are contrary to ZR 24-11 in that the proposed building exceeds the maximum permitted floor area ratio of .5.

Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is more than the maximum permitted lot coverage of 55%.

Proposed plans are contrary to ZR 24-34 in that the proposed front yard is less than the minimum required front yard of 15’.

Proposed plans are contrary to ZR 24-35 in that the proposed side yards are less than the minimum required side yards allowed.

Proposed plans are contrary to ZR 24-36 in that the proposed rear yard is less than the minimum required rear yard of 30’.

Proposed plans are contrary to ZR 24-521 in that the proposed wall height exceeds the maximum wall height of 25’.

Proposed plans are contrary to ZR 25-31 in that there are no parking spaces proposed”; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31; and

WHEREAS, a public hearing was held on this application on August 7, 2007, after due notice by publication in *The City Record*, with a continued hearing on September 11, 2007, and decided on September 11, 2007; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with the condition that the fence along the north property line be protected and/or restored and that garbage be stored within the building; and

WHEREAS, this application is being brought on behalf of Congregation Bnai Shloima Zalman, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the east side of East 21st Street, between Avenue I and Avenue J, and is

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occupied by a two-story and cellar synagogue, which will be demolished; and

WHEREAS, the site has a total lot area of 5,500 sq. ft.; and

WHEREAS, on June 7, 1994, under BSA Cal. No. 160-93-BZ, the Board granted a variance to permit the legalization of an enlargement to an existing synagogue at the site; and

WHEREAS, the prior grant provided for waivers of floor area, FAR, lot coverage, wall height, yards, and parking; and

WHEREAS, the applicant represents that the existing building is obsolete, has sustained water damage, and does not meet the Synagogue's current programmatic needs; and

WHEREAS, the current proposal provides for a two-story and cellar synagogue with the following parameters: a street wall of 24'-0", a total height of 34'-10", 7,236.41 sq. ft. of floor area (2,750 sq. ft. is the maximum permitted); and an FAR of 1.32 (0.50 FAR is the maximum permitted for a community facility), with Use Group 4 synagogue use in the entire building; and

WHEREAS, additionally, the applicant proposes 76 percent lot coverage (a maximum of 55 percent is permitted); no side yards (two side yards of 8'-0" feet each are the minimum required) a front yard of 7'-9" (a front yard of 15'-0" is the minimum required), no rear yard (a rear yard of 30'-0" is the minimum required), and no parking spaces (36 parking spaces are required); and

WHEREAS, the proposed building will have the following program: (1) a multi-purpose room and mikvah in the cellar; (2) the main sanctuary for men and a library on the first floor; and (3) the women's gallery on the second floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to provide sufficient space to accommodate the congregation of approximately 275 families; (2) to provide separate space for men and women during prayer; and (3) to provide space for meetings and programs other than worship services; and

WHEREAS, the applicant states that the proposed amount of space would accommodate the existing congregation; the existing building can only accommodate approximately 275 people seated, or one seat per family; and

WHEREAS, the applicant states that it is religious tradition to provide separate space for men and women during prayer and that the current size and configuration of the worship space does not provide sufficient space for both men and women to worship at the same time; and

WHEREAS, the applicant represents that meeting space is required for educational programs accessory to the Synagogue and for groups to meet outside of the worship space; and

WHEREAS, further, the Synagogue requires a space for providing food to congregants somewhere other than in the worship space, which is intended to remain sacred; and

WHEREAS, the applicant notes that the proposed synagogue is designed with a moveable partition on the first floor so that the space can be divided into smaller spaces for meetings, but opened up into a large worship space when needed; and

WHEREAS, additionally, the applicant represents that

the current building is obsolete in that it lacks adequate restroom facilities and the cellar is no longer functional due to water damage; and

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

WHEREAS, the applicant argues that the requested yard waivers would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, the applicant states that in addition to facilitating sufficient floor plates, the waivers also allow the Synagogue's height to fit into the context of the neighborhood; and

WHEREAS, the Board acknowledges that the Synagogue, 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, based upon the above, the Board finds that the programmatic needs of the Synagogue 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 Synagogue 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 that the Synagogue has existed at the site for several decades; and

WHEREAS, specifically, the applicant represents that the use of the multi-purpose room in the cellar may hold gatherings for members of the congregation approximately once a month for a maximum of approximately 175 people, but will be limited to those parameters for such events; and

WHEREAS, the Board notes that the immediate area is characterized by two- and two-and-a-half-story detached homes, and a number of other community facilities; and

WHEREAS, as to height, the Board notes that the majority of the building will have a street wall height of 24'-0", which is lower than the existing street wall height of 28'-2"; only the center portion of the building will reach a peak of 34'-10"; and

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WHEREAS, the applicant represents that the tower, which encroaches into the sky exposure plane is a permitted obstruction because it does not have any floor area in the portion that penetrates the sky exposure plane; and

WHEREAS, the applicant states that this tower, with a pitched roof, was designed to resemble a dormer, which is a permitted obstruction for homes in the area and is compatible with neighborhood character; and

WHEREAS, the Board notes that the proposed building will provide open space with a width of 7'-0" on both sides of the front of the building and will maintain the front yard of 7'-9"; and

WHEREAS, at hearing, the Board asked the applicant to provide an analysis of the requested parking waiver; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 83 percent of the congregants live within three-quarters of a mile of the site; and

WHEREAS, the Board notes that this exceeds the minimum requirement set forth in ZR § 25-35 that at least 75 percent of the congregants live within three-quarters of a mile of the subject site in order to qualify as a localized congregation; and

WHEREAS, in response to the Community Board's conditions, the applicant agrees to (1) repair and maintain the fence along the north property line at the adjacent neighbor's request; and (2) maintain garbage in a designated area in the cellar until it is removed for collection; 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 Synagogue 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.07BSA079K, dated June 14, 2007; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

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 R2 zoning district, the proposed construction of a two-story and cellar Use Group 4 synagogue, which does not comply with floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 24-36, 24-521, and 25-31, *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 14, 2007" – six (6) sheets and "Received August 27, 2007" – five (5) sheets; and "Received September 10, 2007" – one (1) sheet; 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: a floor area of 7,236.42 sq. ft. (1.32 FAR), two stories, a street wall height of 24'-0", a total height of 34'-10", lot coverage of 76 percent, and a front yard of 7'-9";

THAT the use shall be limited to a house of worship (Use Group 4) and any classes shall be accessory to this use;

THAT the use of the cellar kitchen shall be limited to warming;

THAT no commercial catering shall take place onsite;

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

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

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

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

THAT any 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 Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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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, September 11, 2007.

113-07-BZ

CEQR #07-BSA-080R

APPLICANT – Omnipoint Communications, Inc., for Joseph Norman, owner; Omnipoint Communications Inc., lessee.

SUBJECT – Application May 7, 2007 – Special Permit (§73-30) for a non-accessory radio tower, which is a public utility wireless communication facility and will consist of an 82-foot stealth, together with antennas mounted therein and related equipment at the base thereof.

PREMISES AFFECTED – 155 Clay Pit Road, northeast corner of the intersection of Veterans Road East and Clay Pit Road, Block 7105, Lot 679, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gerasdioso.

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 of the New York City Department of Buildings, dated May 2, 2007, acting on Department of Buildings Application No. 500851731, reads, in pertinent part:

“Proposed construction of telecommunication cabinets on grade and 80 feet height monopole that are not attached to a building or other secure structure that has a lawful use in residential R3-2 zoning district as per TPPN # 5/98 are referred to Board of Standards and Appeals for approval pursuant to Sections 22-21 and 73-30 of the NYC Zoning Resolution”; and

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

WHEREAS, because the monopole will exceed fifty feet in height and will be located in the Special South Richmond Development District, construction of the monopole will also require a special permit from the City

Planning Commission pursuant to Z.R. § 107-73; and

WHEREAS a public hearing was held on this application on August 14, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the instant application; and

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

WHEREAS, the proposed stealth monopole will be located at 155 Clay Pit Road, at the northeast corner of Clay Pit Road and Veterans Road East; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a stealth monopole with a maximum height of 82 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, the related equipment cabinets will be located at the base of the proposed monopole and will be secured by an approximately 6-foot high PVC fence; 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 fence; 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

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, the 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-080R, dated May 7, 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 7, 2007"- (8) 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 no building permit shall be issued unless authorizations are obtained from the City Planning Commission for the proposed height and location;

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, September 11, 2007.

120-07-BZ

CEQR #07-BSA-085M

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: Ivan Schonfeld.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 25, 2007, acting on Department of Buildings Application No. 104741521, reads in pertinent part:

“The proposed conversion is not permitted as-of-right in an M1-6 district. Partial conversion of floor 5 and entire conversion of floors 8, 10, and 11 to Use Group 2 from Use Group 17 is contrary to ZR 42-00. There are no bulk regulations governing residential buildings in M1-6 district”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-6 zoning district, the residential conversion of three and one-half floors of an existing 12-story mixed-use building from commercial/manufacturing use (Use Group 17) to residential use (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 10, 2007, after due notice by publication in the *City Record*, with a continued hearing on August 14, 2007, and then to decision on September 11, 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 5, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the south side of West 30th Street, between Broadway and Fifth Avenue, within an M1-6 zoning district; and

WHEREAS, the site has a width of 25'-0", a depth of 98'-9", and a lot area of 2,472.5 sq. ft.; and

WHEREAS, the site is occupied by a 12-story mixed-use commercial/manufacturing/residential building; and

WHEREAS, the current uses in the building are: (1) retail (Use Group 6) on the first floor; (2) commercial/manufacturing (permitted Use Group 17) on the second floor, third floor, fourth floor, eighth floor, tenth floor, eleventh floor, and the south half of the fifth floor; and (3) residential (Use Group 2) on the sixth floor, seventh floor, ninth floor, twelfth floor, and north side of the fifth floor; and

WHEREAS, the residential use occupies 9,971 sq. ft. of floor area and the commercial/manufacturing use occupies 16,929 sq. ft. of floor area for a total floor area of 26,900 sq. ft. (10.9 FAR); and

WHEREAS, the applicant proposes to convert the southern portion of the fifth floor (969 sq. ft.), the entire eighth floor (2,188 sq. ft.), the entire tenth floor (2,188 sq. ft.), and the

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entire eleventh floor (2,188 sq. ft.) to residential use; and

WHEREAS, the applicant represents that half of the fifth floor, and the entire eighth and tenth floors are currently vacant or used for storage; and

WHEREAS, the applicant proposes to maintain the existing uses on the other floors; and

WHEREAS, the proposed conversions would result in 17,504 sq. ft. of residential floor area and 9,396 sq. ft. of commercial/manufacturing floor area; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: the existing building is functionally obsolete and cannot accommodate a conforming use; and

WHEREAS, specifically, the building is constrained by the following conditions: (1) small floorplates; (2) the absence of a freight entrance and designated freight elevator; and (3) the incompatibility of permitted Use Group 17 uses with existing legal residential tenants on floors above or below; and

WHEREAS, as to the floorplates, the applicant represents that the layout of the building is not marketable for a conforming use; and

WHEREAS, specifically, the central portion of each floor along the easternmost side of the building is occupied by a long and deep, two-elevator and stair core that reduces the useable floor area of each floor by 199 sq. ft. or approximately 11 percent to 1,800 sq. ft. and reduces the width of approximately one-third of the interior floor space from 23 feet to 17 feet adjacent to the core; and

WHEREAS, the applicant notes that the core of the subject building requires a larger proportion of the floorplate than it would for a larger building; and

WHEREAS, the applicant represents that due to the core's design, any separation of floors into individual offices or tenant spaces must provide a fire-rated corridor from the elevator/stair lobby to the fire escape exit door; and

WHEREAS, the applicant notes that the existing fire escape, which provides the second means of egress, is accessed through the rear of the building; and

WHEREAS, the introduction of a second means of egress would further reduce the width of the interior floor space in front of the elevator and stair core from 17 feet to 12 feet, and the width of the rear third of building from 23 feet to 19 feet; and

WHEREAS, the applicant represents that, due to the noted conditions, the floors must be rented to a single office-type user with a small business and minimal needs for individual offices; and

WHEREAS, as to freight access, the applicant represents that the absence of a freight entrance or designated freight elevator and the single narrow entrance serving a mix of uses make the building unsuitable for a conforming tenant with heavy visitor or delivery traffic; and

WHEREAS, the applicant represents that, although there are two passenger elevators, there is no designated freight elevator and it would not be feasible to install one; and

WHEREAS, because the first floor is occupied by retail use, the building entrance and lobby are confined to a narrow

space between the easternmost building wall and the demising wall of the store and the elevator/stair core, which, as noted, is shared by passenger and freight access; and

WHEREAS, the applicant represents that this results in a narrow and awkwardly-shaped lobby corridor condition that is not compatible with a commercial use requiring a regular receipt or delivery of large packages; and

WHEREAS, as to marketability, the applicant asserts that the noted conditions limit the suitable tenants to small office-type uses; and

WHEREAS, however, the building in this location in the wholesale district (occupied by many shipping and wholesaling businesses) is not marketable to such uses and the building cannot compete with other more suitable buildings in the area; and

WHEREAS, as to the uniqueness of these conditions, the applicant analyzed other buildings within the subject zoning district (bounded by West 23rd Street, West 31st Street, Fifth Avenue, and Sixth Avenue) and found that there are only three buildings in the area that are similar in size and configuration; and

WHEREAS, the applicant distinguished those three buildings from the subject building in that they have at least one of the following conditions (1) larger elevators, (2) office tenants, as opposed to manufacturing tenants, with little need for freight elevators, (3) location not within the wholesale district and thus more marketable as office space, (4) better access to natural light, (5) no residential tenants in the building, (6) a separate entrance for freight, and (7) a corner lot; and

WHEREAS, the applicant submitted a land use map identifying the uses in the area; and

WHEREAS, as to the existing uses in the building, the presence of legal pre-existing residential uses limits which commercial uses would be viable on floors above or below them, given concerns about environmental conditions such as noise; and

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

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming fully commercial building and (2) the proposed building with four floors of market rate residential units and four floors of existing/regulated rate residential units; and

WHEREAS, the applicant concluded that the conforming fully commercial scenario would result in an insufficient rate of return, due to the unique conditions of the site; and

WHEREAS, at hearing, the Board directed the applicant to analyze a scenario with all the existing and proposed residential units at market rates; and

WHEREAS, the applicant submitted supplemental analyses of (1) a scenario with the existing permitted uses but with an improved elevator and lobby configuration and (2) a scenario with the existing permitted uses, but with market rates for all the residential uses as opposed to the existing/regulated rates; and

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WHEREAS, the applicant represents that neither scenario would result in a sufficient rate of return; and

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

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

WHEREAS, as noted, the applicant proposes to convert three and one-half floors of the building from commercial/manufacturing use to residential; and

WHEREAS, the applicant notes that four and one-half floors are already occupied by residential use and that all of the floors proposed to be converted are either above or below a floor currently occupied by residential use; and

WHEREAS, the applicant represents that the surrounding area is a mix of commercial, light manufacturing, residential, and Joint Living Work Quarters for Artists; and

WHEREAS, specifically, the applicant represents that there are several residential and commercial buildings located on the north side of West 30th Street, across the street from the site; and

WHEREAS, additionally, there are two residential buildings with ground floor retail on the south side of West 30th Street, adjacent to the site; and

WHEREAS, the applicant notes that the proposed conversion would not change the street-level retail use and the second through fourth floors would remain commercial; and

WHEREAS, the proposed conversion would add three new residences (on the eighth, tenth and eleventh floors); the conversion on the fifth floor involves the enlargement of the existing residence into the empty storage space on that floor, which is currently vacant; and

WHEREAS, the applicant does not propose any changes to the building envelope; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of three dwelling units and the expansion of a fourth will not impact any nearby conforming uses; and

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

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

WHEREAS, the Board observes that the proposed conversion of three and one-half floors of a 12-story building to residential use is limited in scope and compatible with nearby development; and

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

and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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 (EAS) CEQR No. 07BSA085M, dated May 11, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21 and grants a variance, to permit, within an M1-6 zoning district, the residential conversion of three and one-half floors of an existing 12-story mixed-use building from commercial/manufacturing use (Use Group 17) to residential use (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2007"—twelve (12) sheets; 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, September 11, 2007.

25-06-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman

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 October 2, 2007, at 1:30 P.M., for decision, hearing closed.

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 –

For Applicant: Mario A. Canteros.

ACTION OF THE BOARD – Laid over to October 30, 2007, at 1:30 P. M., for postponed 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 and Georges Jacquemart.

For Opposition: Maria Kalish of Assemblyman Mark Weprin, Antonio Whitaker of Council Member David Weprin, Anna Levine, Dave Kerper and L. Simon.

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

329-06-BZ

APPLICANT – Wholistic Healthworks, Inc., for Albino J. Testani, owner.

SUBJECT – Application December 21, 2006 – Special Permit (§73-36) to legalize a PCE in C2-2/R2A/R4 zoning districts. The proposal is contrary to Section 32-00.

PREMISES AFFECTED – 34-34 Bell Boulevard, west of Bell Boulevard, 184.07’ from 35th Avenue, Block 6112, Lot 39, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Seung Pak.

For Opposition: Gary Kallem.

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 October 16, 2007, at 1:30 P.M., for decision, hearing closed.

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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

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 2, 2007, at 1:30 P. M., for continued hearing.

52-07-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES – None.

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

53-07-BZ

APPLICANT – Wolf Block, Schorr & Solis-Cohen, LLP, for 1901 Realty Realty, LLC, owner.

SUBJECT – Application February 23, 2007 – Variance (§72-21) to permit the redevelopment and conversion of an existing three-story factory/warehouse to residential use. The proposal is contrary to §42-00. M1-1 district.

PREMISES AFFECTED – 1901 Eighth Avenue, corner of Eight Avenue and 19th Street, Block 888, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Opposition: David Latham.

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 October 16, 2007, at 1:30 P.M., for decision, hearing closed.

58-07-BZ

APPLICANT – Rex Carner c/o Carner Associates, for Mr. Vito Savino, owner.

SUBJECT – Application March 5, 2007 – Variance (§72-21) to permit a new two-family dwelling on a vacant lot. The Premises is located in an R3A zoning district. The proposal is contrary to lot area (§23-32), residential FAR (§23-141), and parking (§25-21).

PREMISES AFFECTED – 18-02 Clintonville Street, North west corner of 18 Avenue and Clintonville Street. Block 4731, Lot 9, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Rex Carner.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

88-07-BZ

APPLICANT – Eric Palatnik, P.C., for Lisa Roz and Ronnie Roz, owners.

SUBJECT – Application April 19, 2007 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and lot coverage (§23-141(b)); side yard (§23-461(a)) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1633 East 29th Street, eastern border of 29th Street, south of Avenue P and North of Quentin Road, Block 6792, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 16, 2007, at 1:30 P.M., for continued hearing.

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

APPEARANCES –

For Applicant: Ellen Hay.

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 September 25, 2007, at 1:30 P.M., for decision, hearing closed.

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.

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 October 16, 2007, at 1:30 P.M., for decision, hearing closed.

144-07-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on December 11, 2001, under Calendar Nos. 6-98-BZ and printed in Volume 86, Bulletin No. 50, is hereby corrected to read as follows:

6-98-BZ

APPLICANT – Pillsbury Winthrop LLP for WXII/ Hubert Street, L.L.C., owner.

SUBJECT – Application July 23, 2001 – reopening for an amendment to the resolution.

PREMISES AFFECTED - 3-9 Hubert Street/137 Hudson Street/4 Collister Street, Block 214, Lot 14, Borough of Manhattan.

COMMUNITY BOARD # 1M

APPEARANCES -

For Applicant: Adriene Bernard.

ACTION OF THE BOARD – Application reopened, and resolution amended.

THE VOTE TO GRANT –

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Korbey and Commissioner Caliendo.....4

Negative:0

THE RESOLUTION –

WHEREAS, the applicant has requested a re-opening and an amendment to the resolution; and

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

WHEREAS, a public hearing was held on this application on November 20, 2001, after due notice by publication in the City Record, laid over to December 11, 2001 for decision; and

WHEREAS, the applicant seeks a minor modification of the prior variance (6-98-BZ) which authorized the construction of a twelve-story building (including mezzanine) consisting of sixty-eight loft style residential units and penthouse, which is contrary to Z.R. § 41-11; and

WHEREAS, on June 1, 2001, the Landmarks Preservation Commission granted approval of certain design changes in the building as previously approved; and

WHEREAS, the instant application seeks to alter the configuration of the building as approved by the Board to conform to the design of the building as approved by the Landmarks Preservation Commission, and to make certain changes in the interior layout of the building and to permit a curb cut; and

WHEREAS, the building as modified, will contain fewer residential units, including the residential units in the townhouses on Collister Street and Hubert Street; and

WHEREAS, the building's massing will be more slender and slightly taller but will not create any greater encroachment of the sky exposure plane than previously approved; and

WHEREAS, the decorative bridge connecting the subject building to 145 Hudson Street has been removed; and

WHEREAS, the infill building on Hudson Street has

been designed for commercial use, which is permitted by the M1-5 and Tribeca Mixed Use regulations; and

WHEREAS, the curb-cut on Collister Street would only access a single enclosed parking space within the Collister Street townhouse building and will not inhibit traffic or pedestrian flow.

Resolved, that the Board of Standards and Appeals hereby reopens and amends the resolution pursuant to Z.R §§ 72-01 and 72-22, said resolution having been adopted on November 4, 1998, so that as amended this portion of the resolution shall read:

“to permit the reduction in the number of residential units from sixty eight (68) to thirty six (36) and a reduction in floor area from 96,410 to 96,094 square feet, to remove the decorative bridge connecting the subject building to 145 Hudson Street and to allow a curb cut to be located on Collister Street, within 50 feet of the intersection of Collister and Beach Streets, on condition that the premises shall be maintained in substantial compliance with the existing and proposed plans submitted with the application marked ‘Received August 31, 2001-(14) sheets; and on further condition;

THAT the premises shall be maintained in compliance with all applicable provisions of the Administrative Code with respect to fire safety and prevention

THAT the premises remain graffiti free at all times

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

THAT the development as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT substantial construction shall be completed in accordance with Z.R. §72-23. ”

(DOB 101700358/98)

Adopted by the Board of Standards and Appeals, December 11, 2001.

***The resolution has been corrected in the part of the plans date, which read: “July 23, 2001...” now reads: “August 31, 2001...”. Corrected in Bulletin Nos. 34-35, Vol. 92, dated September 20, 2007.**

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*CORRECTION

This resolution adopted on November 14, 2006, under Calendar Nos. 42-06-BZ and printed in Volume 91, Bulletin Nos. 43-44, is hereby corrected to read as follows:

42-06-BZ

APPLICANT – Steven Sinacori, Stadtmauer Bailkin, LLP for New York Hospital Queens, owner.

SUBJECT – Application March 9, 2006 – Variance pursuant to Z.R. §72-21 to allow a predominantly below-grade group parking facility, accessory to New York Hospital Queens, to violate applicable front and side yard requirements. Site is located within R4 and R4/C1-2 districts (proposed as part of a Large Scale Community Facility Plan); contrary to Z.R. §24-33, §24-34, and §24-35. 42-06-BZ: Variance pursuant to Z.R. §72-21 to allow a new five-story hospital building, to be constructed on the existing campus of New York Hospital – Queens, to violate applicable height, setback and rear yard equivalent requirements. Project site is located within an R4 district (proposed as R6 within Large Scale Community Facility Plan); contrary to Z.R. §24-522 and §24-382.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West side of 141st Street, Block 6410, Lots 1, 19, 21, 24, 25, 26, 28, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Sinacori.

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 September 28, 2006, acting on Department of Buildings Application No. 402270047, reads, in pertinent part:

1. Proposed building does not comply with the required rear yard equivalent requirements of Z.R. 24-382.
2. Proposed building does not comply with the height [and] setback requirements of Z.R. 24-522.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, (the “Proposed Building”), which does not comply with applicable zoning requirements concerning rear yard equivalent, and height and setback, contrary to ZR §§ 24-382 and 24-522; and

WHEREAS, the Proposed Building is five stories and has a total height of 73’-5” at its Main Street frontage; it will

occupy 97,219 sq. ft.; and

WHEREAS, a new 2,098 sq. ft. entrance and lobby to the Hospital campus will be integrated with the Proposed Building; and

WHEREAS, the non-complying parameters are as follows: (1) a 20’-0” encroachment into the required rear yard equivalent at a height of 14’-6” (a full 30 ft. rear yard equivalent is required for the full height of the building); and (2) a varying encroachment into the required setback of 15’-0” at a height of 60’-0” (a full setback of 15 ft. must be provided at a height of 60 ft. for the length of the building); and

WHEREAS, a public hearing was held on this application on October 24, 2006 after due notice by publication in the *City Record*, and then to decision on November 14, 2006; and

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

WHEREAS, Community Board 7, Queens, recommends conditional approval of this application, and appeared at hearing to support it; and

WHEREAS, the Coalition to Preserve Queenboro Hill and certain neighbors appeared in opposition to this application; and

WHEREAS, as to the instant application, the only stated objection was an unfounded concern about the proximity of the adjacent gas station to oxygen tanks that allegedly will be located within the Proposed Building; and

WHEREAS, however, most of the concerns expressed by the opposition at hearing related to a separate variance application (described below) and therefore are discussed in the resolution for that application; and

WHEREAS, this application was brought on behalf of the New York Hospital - Queens (hereinafter, the “Hospital”), a not for profit institution; and

WHEREAS, the Hospital’s campus (the “Campus”) occupies two separate zoning lots: (1) the majority of the subject block, encompassing 235,964.35 square feet of lot area and bounded by Main Street to the west, Booth Memorial Avenue to the south, 141st Street to the east, and 56th Avenue to the north; and (2) the majority of the block to the south across Booth Memorial Avenue (Block 6401), encompassing 44,199 square feet of lot area, and bounded by Main Street to the west, 58th Avenue to the south, 141st Street to the east and Booth Memorial Avenue to the north; and

WHEREAS, the subject block is currently occupied by the following Hospital components: (1) the eight-story Main Building, which was the original Booth Memorial Hospital; (2) the eight-story North Building; (3) the three-story Ancillary Building; and (4) the two-story East Building; and

WHEREAS, the applicant states that the Hospital occupies almost the entire subject block but for a non-conforming gasoline station located at the northwest corner of the block on a separate tax lot; and

WHEREAS, the applicant states that other actions relative to development on the Campus are being pursued as

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well; and

WHEREAS, specifically, the instant application was brought concurrently with another variance application (BSA Cal. No. 41-06-BZ), also granted the date hereof, for a construction of a predominantly below-grade parking structure (the "Garage") for the Hospital on an adjacent part of the Hospital campus, which does not comply with applicable front [and side yard] requirements; and

WHEREAS, additionally, the applicant notes that the Hospital is also seeking the following actions through CPC: (1) a zoning map change, pursuant to New York City Charter § 197(c), rezoning the subject block from an R4 zoning district to an R6 zoning district, and permitting increased floor area necessary for Proposed Building; (2) an authorization for a large-scale community facility development pursuant to ZR § 79-21; (3) an authorization, pursuant to ZR § 79-31, permitting the location of the proposed Garage to be located across Booth Memorial Avenue from the subject block but within the proposed large-scale community facility development; and (4) a special permit, pursuant to ZR § 74-53, permitting the Garage to have 222 parking spaces in excess of the 150 parking space maximum for group parking facilities permitted by ZR § 25-12; and

WHEREAS, the zoning map change was approved by the City Council on October 25, 2006; the proposed floor area and other bulk parameters of the Proposed Building (aside from rear yard equivalent and setback) comply with the new R6 zoning requirements; and

WHEREAS, the specific portion of the Hospital campus to be developed with the Proposed Building is located at on the far west side of the subject block, along Main Street, adjacent and to the south of the above-mentioned gas station (the "Development Site"); and

WHEREAS, the Development Site is currently occupied by a two-level 150 space parking structure that will be demolished; parking will occur within the proposed Garage to be constructed on the adjacent block; and

WHEREAS, the applicant states that the proposed non-complying bulk of the Proposed Building is due to the Hospital's need to enhance its quality of services and to meet the need of increasing community demand for clinical services; and

WHEREAS, more specifically, the waivers are necessary to create a building with floor plates that will meet the programmatic needs of the Hospital; and

WHEREAS, the Proposed Building will allow the Hospital to expand its cardiology and surgery services, increase the number of critical care beds, and consolidate acute care services currently located throughout the Hospital campus to a new and efficient facility; the increase in beds is from 439 to 519; and

WHEREAS, specifically, the applicant states that the Proposed Building will involve the following components: (1) an upgrade to cardiovascular services including the replacement and enlargement of the cardiac catheterization suite; (2) more cardiac related procedure rooms and increased recovery space to meet current and projected needs; (3) a new and enlarged suite for non-invasive

cardiology programs will also be constructed as the entire second floor of the Hospital will be devoted to a state-of-the-art cardiology center; (4) upgrades to the ambulatory surgery facilities including the consolidation of operating rooms and cystoscopy rooms into a large modern suite; (5) the number of operating rooms and recovery beds will be increased; (6) a separate endoscopy suite will be established; and (7) two additional inpatient units will be created, providing a total of 80 additional beds; and

WHEREAS, additionally, the applicant notes that the Hospital seeks to develop a new multi-purpose Main Street entrance to the Hospital complex that includes a new off-street, canopied drop-off area for inpatients, visitors and ambulatory outpatients, as well as providing covered access to the Hospital auditorium; and

WHEREAS, the applicant states that the new entrance and off-street drop-off area, located immediately south of the Proposed Building, will serve to eliminate street congestion caused by cars queuing for sidewalk access, will provide shelter from the elements for patients entering and exiting the Hospital, and will further enhance hospital security and efficiency by providing a central entrance to the Hospital complex; and

WHEREAS, the applicant argues that the new Main Street entrance cannot be built and integrated into the Hospital's modernization/expansion plan without the requested rear yard equivalent variance; and

WHEREAS, specifically, in order to provide a complying rear yard equivalent for the Proposed Building, it would be necessary to move it south into the area to be occupied by the new Main Street entrance and drop-off area, thereby eliminating a crucial element to the proposed Hospital development and exacerbating current patterns of patient and vehicle congestion that the new entrance is designed to eliminate; and

WHEREAS, as to setback, the applicant notes that the Proposed Building's roof top mechanical room encroaches into the required 15'-0" setback, as indicated above; and

WHEREAS, the applicant states that the mechanical room has been placed at the front of the roof within the setback to optimize mechanical system efficiency and usable interior space; and

WHEREAS, the applicant notes that the design also results in a cost savings of at least two million dollars; and

WHEREAS, the applicant further states that the setback encroachment of the mechanical room will allow a floor plate that permits more efficient use of the Hospital space, more efficient use of Hospital staff, greater patient comfort and substantially reduced construction and operating costs; and

WHEREAS, at hearing, the applicant amplified upon the above arguments; and

WHEREAS, specifically, the applicant noted that a complying building, constructed without the requested waivers, would result in the loss of 18 of the additional hospital beds, three of the proposed treatment rooms, and one-third of the required mechanicals; and

WHEREAS, the applicant explains that the

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implementation of the required 30 ft. rear yard equivalent and compliance with the required setback would diminish the floor plates and result in these losses; and

WHEREAS, the Board credits the applicant's statements as to the Hospital's programmatic needs and the limitations of a complying development; and

WHEREAS, the Board also notes that the Proposed Building must be constructed at a location within the subject block such that it can integrate with the other Hospital components and the new entrance; the Development Site is the most efficient and logical location; and

WHEREAS, based upon the above, the Board finds that the adjacency of the existing Hospital buildings to the Development Site constitutes a unique physical condition, which, when considered in conjunction with the programmatic need of the Hospital to construct the Proposed Building, 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 Hospital is a not-for-profit organization and the proposed development will be in furtherance of its 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 the immediate surrounding neighborhood (within a 400-foot radius) is developed with a mix of attached and unattached dwellings and apartments ranging from one to three-stories, one-story commercial buildings, the Kissena Corridor Park, and the Queens Botanical Gardens; and

WHEREAS, the applicant observes that north of the subject block, the immediate surrounding neighborhood consists primarily of Kissena Corridor Park and the Queens Botanical Gardens; east of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to three-stories and three-story brick apartment buildings; west of the site, the immediate surrounding neighborhood consists primarily of one-story commercial buildings and attached and unattached residential brick buildings ranging in height from one to three-stories; and south of the site, the immediate surrounding neighborhood consists of attached and unattached residential brick buildings ranging in height from one to two-stories; and

WHEREAS, the applicant further observes that the surrounding neighborhood within a quarter-mile of the Hospital is developed with a mix of attached and unattached residential buildings ranging from one to three-stories high, three to fifteen-story high apartment buildings, public educational facilities, the Horace Harding Expressway, and the Kissena Corridor Park; and

WHEREAS, the Board notes that the proposed rear yard equivalent waiver only affects the non-conforming gas station adjacent to the north; and

WHEREAS, however, the Board observes that any residential redevelopment of this adjacent site can offset the

effect of the rear yard equivalent waiver since the site is on a corner and has two frontages from which sufficient light and air can be drawn; and

WHEREAS, further, the Board notes that the proposed setback encroachment will only be visible from another Hospital building; and

WHEREAS, the Board also notes that the modest increase in street wall height is along Main Street, which is a wide street where such an increase will have minimal impact; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing buildings on the zoning lot and the programmatic needs of the Hospital; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Proposed Building is designed to address the Hospital's present programmatic needs; and

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

WHEREAS, CPC, as Lead Agency, has conducted an environmental review (CEQR No. 05DCP066Q) of the subject actions before the BSA and of related actions approved by CPC, noted above; and

WHEREAS, CPC issued a Conditional Negative Declaration (CND) for CEQR No. 05DCP066Q, on September 25, 2006.

Therefore it is Resolved, that the Board of Standards and Appeals adopts the CPC CEQR determination and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of the Queens campus of the New York Hospital, within an R6 zoning district, and as part of a Large Scale Community Facility Plan, the proposed construction of a five-story Use Group 4 hospital building, which does not comply with applicable zoning requirements concerning rear yard equivalent and setback, contrary to ZR §§ 24-382 and 24-522; *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 October 11, 2006"- sixteen (16) sheets; and *on further condition*:

THAT rear yard equivalent and height and setback shall be as indicated on the BSA-approved plans;

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

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
November 14, 2006.

***The resolution has been corrected in the part of the plans date, which read: “October 12, 2006...” now reads: “October 11, 2006...”. Corrected in Bulletin Nos. 34-35, Vol. 92, dated September 20, 2007.**