
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
40 Rector Street, 9th Floor, New York, N.Y. 10006.

Volume 93, Nos. 41-43

November 6, 2008

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196-08-BZ	792 Tenth Avenue, a/k/a 455 West 53 rd Street, Manhattan
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DOCKET

New Case Filed Up to October 28, 2008

250-08-BZ

1925 East 5th Street, East side of East 5th Street between Avenue R and Avenue S, Block 6681, Lot(s) 490, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

251-08-BZ

2153 Ocean Parkway, East side of Ocean Parkway between Avenue and U and Avenue V, Block 7133, Lot(s) 50, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

252-08-A

11 Clinton Walk, West side Clinton Walk at the intersection of 12th Avenue and Beach 214th Street, Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning District.

253-08-BZ

2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court., Block 7455, Lot(s) 31, Borough of **Brooklyn, Community Board: 15**. Variance to allow legalization of prior enlargement and allow a new enlargement of a single family residence.

254-08-BZ

1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue., Block 6734, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. Variance to legalize the use and enlargement of a Yeshiva, contrary to use regulations.

255-08-BZ

1994-1996 Madison Avenue, Western side of Madison Avenue between East 127th and East 128th Streets., Block 1752, Lot(s) 16,116, Borough of **Manhattan, Community Board: 11**. Variance to allow a six-story mixed use building, contrary to use regulations.

256-08-BZ

2000-2002 Madison Avenue, Western side of Madison Avenue between East 127th and East 128th Streets., Block 1752, Lot(s) 18, 19, Borough of **Manhattan, Community Board: 11**. Variance to allow a six-story mixed use building, contrary to use regulations.

257-08-BZ

120 East 56th Street, Between Park Avenue and Lexington Avenue., Block 1310, Lot(s) 65, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment.

258-08-BZ

343-349 West 42nd Street, Located on 42nd Street, mid-block, between 8th Avenue and 9th Avenue., Block 1033, Lot(s) 9, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow legalization of a physical culture establishment

259-08-BZ

242-02 61st Avenue, Douglaston Parkway at 61st Avenue., Block 8286, Lot(s) 185, Borough of **Queens, Community Board: 11**. Variance to allow the enlargement of an existing supermarket, contrary to use regulations.

260-08-BZ

148 Oxford Street, Located on Oxford Street between Shore Boulevard and Oriental Boulevard., Block 8757, Lot(s) 3, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home.

261-08-BZY

140-75 Ash Avenue, Between Kissena Boulevard and Bowne Streets., Block 5182, Lot(s) 34, Borough of **Queens, Community Board: 7**. Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

262-08-A

140-75 Ash Avenue, Between Kissena Boulevard and Bowne Streets, Block 5182, Lot(s) 34, Borough of **Queens, Community Board: 7**. An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District .

263-08-BZY

29-23 40th Road, Through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east., Block 402, Lot(s) 12 & 35, Borough of **Queens, Community Board: 1**. Extension of time to complete construction (§11-331) of a minor

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development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

264-08-A

29-23 40th Road, Through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east., Block 402, Lot(s) 12 & 35, Borough of **Queens, Community Board: 1**. Ana appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

265-08-BZ

70 Wyckoff Avenue, South east corner of Wyckoff Avenue and Suydam Street., Block 3221, Lot(s) 31, Borough of **Brooklyn, Community Board: 4**. Variance to allow legalization of existing residential use in former industrial building, contrary to use regulations.

266-08-BZ

2007 New York Avenue, East side of New York Avenue between Avenue K & Avenue L., Block 7633, Lot(s) 25, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) for the enlargement of a single family home.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

NOVEMBER 25, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 25, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

239-97-BZ

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEALS CALENDAR

103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

164-08-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Michelle & James Fox, owners.

SUBJECT – Application June 17, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling in the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26-1/2 State Road, north side Rockaway Point Boulevard, west of Beach 178th Street, Block 16350, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

174-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lydia & Cosmo Lenaro, owners.

SUBJECT – Application July 1, 2008 – Proposed reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 617 Bayside Drive, partially in the southeast corner of the intersection of mapped Bayside Drive and Beach 202nd Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

192-08-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Margaret Campione, owner.

SUBJECT – Application July 15, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to GCL 35 and not fronting a mapped street contrary to GCL 36. R4 Zoning District.

PREMISES AFFECTED – 772 Bayside, west side of Bayside 90' north of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

239-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen Strada, lessee.

SUBJECT – Application September 25, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to GCL36 and the upgrade of an existing non-conforming private disposal system partially in the bed of a service road contrary to DOB policy. R4 Zoning District.

PREMISES AFFECTED – 23 Hudson Walk, east side, 90' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

NOVEMBER 25, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 25, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

20-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.

SUBJECT – Application January 30, 2008– Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

40-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue Northwest corner of east 224th Street Block 4871, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

163-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21) to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR sections 24-11 (floor area, FAR ad lot coverage), 24-34 (front yard), 24-35 (side yards), and 25-30 (minimum parking requirements. R2 district.

PREMISES AFFECTED –2022 Avenue M, southwest corner of the intersection of Avenue M and East 21st Street, Block 7656, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (23-141) and side yard (23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (23-141) and the permitted perimeter wall height (23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 28, 2008
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application July 25, 2008 – Extension of Time to Complete Construction of an existing plaza for a residential high rise building, in a C1-9 zoning district, which expired on June 19, 2008 and an Extension of Time to obtain a Certificate of Occupancy which expires on June 19, 2009.

PREMISES AFFECTED – 300 East 74th Street, between First and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

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, Commissioner Hinkson and Commissioner Montanez.....5
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 complete construction of a modification to an existing plaza of a residential building, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, and then to decision on October 28, 2008; and

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

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

WHEREAS, the subject site is located on the southeast corner of Second Avenue and 74th Street, within a C1-9 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1966 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a 36-story mixed-use commercial/residential building at the site; and

WHEREAS, on April 19, 2005, under the subject

calendar number, the Board granted an amendment to permit modifications to the size, configuration and design of the existing plaza for the 36-story building; and

WHEREAS, most recently, on June 19, 2007, the Board extended the time to complete construction of the modification of the existing plaza, and extended the time to obtain a certificate of occupancy; and

WHEREAS, a condition of the grant was that work be completed by June 19, 2008, and a certificate of occupancy be obtained by June 19, 2009; and

WHEREAS, the applicant represents that construction was delayed due to work related to a 2007 inspection of the building's façade, pursuant to Local Law 9, which required the installation of scaffolding around the subject premises and prevented any work on the plaza from occurring; and

WHEREAS, the applicant further represents that a leak was discovered in the parking garage below the plaza in November 2007, which requires that the membrane for the garage roof be replaced prior to commencing any work on the plaza; and

WHEREAS, the applicant states that additional time is therefore necessary to complete the project; and

WHEREAS, thus, the applicant now requests extensions of time to complete construction and to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the replacement of the membrane for the garage roof will be completed by January 2009 and the construction of the modification to the plaza will be completed by June 2009; and

WHEREAS, at hearing, the Board requested that the applicant establish that it is ready to commence work on the garage roof and plaza; and

WHEREAS, in response, the applicant submitted a contract dated September 17, 2008 for performance of the garage roof work, and plans for the garage roof work and plaza design; and

WHEREAS, at hearing, a neighbor provided testimony that the plaza was not being secured and maintained free of debris; and

WHEREAS, the Board directed the applicant to install temporary fencing at the entrance of the plaza to secure the premises; and

WHEREAS, the applicant agreed to install such fencing; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 3, 1966, so that as amended this portion of the resolution shall read: "to grant a nine-month extension of time to complete construction, to expire on July 28, 2009, and a six-month extension of time to obtain a certificate of occupancy, to expire on January 28, 2010; *on condition*:

THAT construction shall be substantially complete by July 28, 2009;

THAT a certificate of occupancy shall be obtained by

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January 28, 2010;

THAT temporary fencing shall be installed on the perimeter of the plaza to secure the premises until construction is completed;

THAT all conditions from the prior resolution 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. 103595012)

Adopted by the Board of Standards and Appeals, October 28, 2008.

705-68-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Lanide Realty Corporation, owner; City Auto Corporation, lessee.

SUBJECT – Application March 27, 2008 – Extension of Term/waiver for a (UG8) parking lot in an R4-1 zoning district which expired on April 27, 2007.

PREMISES AFFECTED – 88-14/22 182nd Street, 128’ south of the intersection of Hillside Avenue and 182nd Street, Block 9917, Lots 7, 11, 143, Borough of Queens.

COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez.....5

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 permitting open parking and storage of motor vehicles (Use Group 8), which expired on April 27, 2007; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, and then to decision on October 28, 2008; and

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

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

WHEREAS, the subject site is located on the west side of 182nd Street, between Hillside Avenue and 89th Avenue; and

WHEREAS, the site is located within an R4-1 zoning district and is occupied by a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 17, 1961 when, under BSA Cal. No. 7-56-BZ1, the Board granted a variance permitting the operation of a parking lot in a residential district for a term of five years; and

WHEREAS, on January 7, 1969, under the subject calendar number, the Board extended the term of the grant and permitted enlargement of the subject parking lot; and

WHEREAS, the grant was also extended and amended at various other times; most recently on July 21, 1998 extending the term for ten years, to expire on April 27, 2007; and

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

WHEREAS, the applicant represents that a waiver of the Rules of Practice and Procedure is necessary due to a change in the ownership of Lots 7 and 11; and

WHEREAS, the applicant states that Lots 7 and 11 contain 40 parking spaces, and Lot 143 contains 41 parking spaces; and

WHEREAS, the applicant represents that there have been no changes in the use of the site or the site plan, other than the installation of fencing between Lot 143 and Lots 7 and 11; and

WHEREAS, at hearing, the Board directed the applicant to confirm that auto sales do not occur on Lots 7 and 11; and

WHEREAS, in response, the applicant submitted a letter indicating that the manager of Lots 7 and 11 confirmed that no automobiles are sold on the subject lots; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 17, 1961, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on April 27, 2017; *on condition*:

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

THAT no automobiles shall be sold on any portion of the site;

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

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

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

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

(Alt. No. 1032/68)

Adopted by the Board of Standards and Appeals, October 28, 2008.

1 The original application under BSA Cal. No. 7-56-BZ was withdrawn on October 17, 1956.

MINUTES

182-85-BZ

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 19, 2007 – Extension of Term/Waiver of a previously granted Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment (Fox Glass), in an R6B zoning district, which expired on September 9, 2006.
PREMISES AFFECTED – 206-08 20th Street, between 4th and 5th Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Mark McCarthy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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 term of a previously granted variance permitting a one-story building within an R6B zoning district to be used for the storage of commercial vehicles (Use Group 16), which expired on September 9, 2006; and

WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, Community Board 7, Brooklyn, has recommended approval of this application; and

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

WHEREAS, the site is located on the north side of 20th Street, between 4th Avenue and 5th Avenue, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 9, 1986 when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story building for the storage of commercial vehicles (Use Group 16) for a contractor's establishment; and

WHEREAS, on July 15, 1997, the grant was extended by ten years, to expire September 9, 2006; and

WHEREAS, the applicant represents that there have been no changes to the site; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate

with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on September 9, 1986, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 9, 2006, to expire on September 9, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received July 10, 2008”- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 9, 2016;

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

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

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

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

(DOB App. No. 947/84)

Adopted by the Board of Standards and Appeals, October 28, 2008.

183-85-BZ

APPLICANT – Dominick Salvati & Son Architects, for Salvatore Meeina, owner.

SUBJECT – Application November 9, 2007 – Extension of Term/waiver of a previously granted Variance (§72-21) for the operation of a (UG16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, in an R6B zoning district, which expired on November 18, 2006.

PREMISES AFFECTED – 206-08 20th Street, between 4th and 5th Avenue, Block 640, Lots 21 & 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Mark McCarthy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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 term of a previously granted variance permitting an open storage yard (Use Group 16) with accessory office space within an R6B zoning district, which expired on November 18, 2006; and

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WHEREAS, a public hearing was held on this application on September 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008, and then to decision on October 28, 2008; and

WHEREAS, Community Board 7, Brooklyn, has recommended approval of this application; and

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

WHEREAS, the site is located on the south side of 20th Street, between 4th Avenue and 5th Avenue, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 1986, when, under the subject calendar number, the Board granted a variance to permit the use of an open yard for storage of building materials (Use Group 16) with accessory office space; and

WHEREAS, on July 15, 1997, the grant was amended to extend the hours of operation and the term was extended by ten years, to expire November 18, 2006; and

WHEREAS, the applicant represents that there have been no changes to the site; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on November 18, 1986, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from November 18, 2006, to expire on November 18, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received July 10, 2008"- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 18, 2016;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB App. No. 658/84)

Adopted by the Board of Standards and Appeals, October 28, 2008.

360-01-BZ

APPLICANT – Carl. A. Sulfaro, Esq., for Kings Knapp Development Corporation, owner.

SUBJECT – Application July 1, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C2-2/R-4 zoning district, which expired on December 17, 2004.

PREMISES AFFECTED – 2228 Gerritsen Avenue, southwest corner of Avenue U, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16), which expired on December 17, 2004; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2008, and then to decision on October 28, 2008; and

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

WHEREAS, the site is located on the southwest corner of the intersection at Avenue U and Gerritsen Avenue, in a C2-2 (R4) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board permitted a lot area enlargement of the gasoline service station; a condition of the grant was that a new certificate of occupancy be obtained by December 17, 2004; and

WHEREAS, the applicant represents that the owner's failure to obtain the certificate of occupancy within the stipulated time was due to construction delays beyond its control; and

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

WHEREAS, the Board notes that, based on observations from a site visit, conditions on the site varied from previously approved plans; and

WHEREAS, the applicant provided revised drawings showing the existing conditions and represents that any deviations from previous plans were permitted by DOB; and

WHEREAS, the Board notes that, in order to obtain the certificate of occupancy, the applicant will be required to conform to the approved plans; and

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WHEREAS, at hearing, the Board directed the applicant to conform the site conditions to the BSA-approved drawings; and

WHEREAS, the applicant submitted a revised site plan conforming to the BSA-approved drawings; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy until April 28, 2009 is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 17, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to April 28, 2009; *on condition*:

THAT a certificate of occupancy shall be obtained by April 28, 2009;

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

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

257-04-BZ

APPLICANT – Cozen O’Connor Attorneys, for Boerum Place, LLC, owner.

SUBJECT – Application May 19, 2008 – Original bulk variance was granted on 8/23/05. SOC Amendment filed on 5/19/08 pursuant to ZR §72-01 & §72-22 to modify the street wall with dormers and to extend the elevator bulkhead to allow ADA access to the roof. No changes proposed to floor area or any waiver previously granted by the Board. R6, R6A, C2-3 & C2-4 districts.

PREMISES AFFECTED – 252/260 Atlantic Avenue, a/k/a 83-89 Boerum Place, a/k/a 239/247 Pacific Street, east side of Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted the construction of a non-complying seven-story mixed-use, residential/commercial building; and

WHEREAS, a public hearing was held on this application on August 19, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7,

2008, and then to decision on October 28, 2008; and

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

WHEREAS, on August 23, 2005, the Board granted a variance, pursuant to ZR §72-21, permitting the construction of a seven-story mixed-use (Use Group 2 and Use Group 6) building on a site partially within a C2-4 (R6A) zoning district and partially within a C2-3 (R6) zoning district within the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict; and

WHEREAS, the applicant now seeks to create dormers on the Pacific Street frontage and to raise the height of the elevator bulkhead; and

WHEREAS, the applicant represents that the proposed modifications do not create new zoning non-compliances or increase the waivers originally granted; and

WHEREAS, the applicant further represents that the additional dormers are consistent with the allowable building form, and that raising the elevator bulkhead will allow wheelchair access to the roof area; and

WHEREAS, the applicant initially represented that, subsequent to a DOB audit, the previously approved plans triggered two additional waivers to the Zoning Resolution that were not originally contemplated in the 2005 approval, specifically: (i) waivers to ZR § 101-721, regarding the streetwall height within the Special Downtown Brooklyn District and the Atlantic Avenue Subdistrict along Boerum Place, and (ii) the clarification of the accessory roof top pool; and

WHEREAS, the Board raised concerns as to whether the applicant could properly justify the need for such waivers in the context of the findings made under ZR § 72-21, specifically with respect to the (e) finding; and

WHEREAS, in response, the applicant modified the proposal to remove the roof top pool and lower the street wall along Boerum Place to meet the Special District regulations; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment to the site plan is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on August 23, 2005, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the proposed dormers on the Pacific Street frontage and to raise the height of the elevator bulkhead; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received October 15, 2008”–(1) sheet and “September 16, 2008”–(12) sheets; and *on further condition*:

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

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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. 302336292)

Adopted by the Board of Standards and Appeals, October 28, 2008.

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Laid over to December 16, 2008, at 10 A.M., for continued hearing.

94-58-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Nor-East S/S Incorporated, lessee.

SUBJECT – Application June 19, 2008 – Extension of Term/waiver for the continued operation of a gasoline service station (Mobil), in an R-4 zoning district, which expired on September 30, 2003.

PREMISES AFFECTED – 22-55/25-75 Brooklyn Queens Expressway, northeast corner of 30th Avenue, Block 1046, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

681-68-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.

SUBJECT – Application June 4, 2008 – Amendment to a previously granted Variance (§72-21) for the change of use

on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.

PREMISES AFFECTED – 137-42 Guy Brewer Boulevard, northwest corner of 140th Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Sandy Anagnostou and Ella Smith

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

739-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cord Meyer Development Company, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application September 16, 2008 – Extension of Term & Extension Time to obtain a Certificate of Occupancy for a (UG15) Amusement Arcade (Peter Pan Games), in a C4-1 zoning district which will expire on April 10, 2009.

PREMISES AFFECTED – 12-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

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COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for continued hearing.

115-94-BZ

APPLICANT – Martyn & Don Weston, for Irma Poretsky, owner.

SUBJECT – Application June 16, 2008 – (§11-411) Extension of Term/Waiver for an Automotive Repair Shop located in an R6 zoning district which expired on July 30, 2006.

PREMISES AFFECTED – 2470-2480 Bedford Avenue, 60 feet north of Clarendon Road, Block 5167, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

24-96-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Leonard Franzblau, owner.

SUBJECT – Application January 23, 2008 – Application filed pursuant to §§11-411 & 11-413 to extend the term of a variance, which expired on October 7, 2007, permitting commercial use in an R7-2 residential zoning district and non-compliance regarding lot coverage and rear yard requirements, and to amend the variance to permit a change in use from a retail store (use group 6) to an eating and drinking establishment (use group 6).

PREMISES AFFECTED – 213 Madison Street, North side of Madison Street between Jefferson Street and Essex Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

117-97-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for Gosehine Garcia, owner.

SUBJECT – Application August 28, 2008 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a legal non-conforming (UG6) eating and drinking establishment (Basille's) in an R3-2 zoning district which expired on September 15, 2008.

PREMISES AFFECTED – 1112 Forest Avenue, south side of Forest Avenue, 25' west of the intersection of Forest Avenue and Greenleaf Place, Block 352, Lot 47, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

197-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for SLG Graybar Sublease LLC, owner; Equinox 44th Street, Incorporated, lessee.

SUBJECT – Application August 8, 2008 – Application to amend a special permit previously granted by the Board of Standards and Appeals to permit, in a C5-3 (MiD) zoning district, a 1,010 sq. ft. extension of an existing physical culture establishment ("Equinox Fitness") within an existing commercial building.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208'4" north of East 42nd Street, Block 1280, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 9, 2008, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

136-08-A

APPLICANT – John Beckmann.

OWNER: Pauline & Gus Englezos.

SUBJECT – Application May 2, 2008 – An appeal seeking to revoke a permit that allows off- street parking in the front yard of an attached dwelling contrary to §25-621. R4-1 Zoning District.

PREMISES AFFECTED – 846 70th Street, between 8th Avenue and Fort Hamilton Parkway, Block 5896, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: John Beckmann.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson and Commissioner Montanez2

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

THE RESOLUTION:1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Brooklyn Borough Commissioner, dated April 3, 2008, to uphold the approval of an Alteration Type 3 permit (310077092) for the installation of a new curb cut, made in conjunction with an Alteration Type 2 permit issued for renovation of the subject premises; and

WHEREAS, the Final Determination reads, in pertinent part:

“This is in response to your letter dated March 25, 2008 and its attachments regarding allowable off-street parking in a side lot ribbon in R4-1 zoning district.

“Off-street parking is a permitted obstruction within front yards where no more than two parking spaces are required, provided such yards are located within a permitted side lot ribbon.

“[T]he side lot ribbon is that contiguous area that extends along the entire length of a side lot line from the street line to an intersecting rear lot line.

“[O]ff-street parking in a residential building located in R4-1, where no more than two parking spaces are required, is permitted within any portion of the side lot ribbon, regardless of the location of this portion whether in the front, side or rear yard.

“[T]he Zoning Resolution as written does not put any distinction between detached, semi-detached and attached residential buildings in regard to off-street parking as long as located in the locations described as per ZR 25-621(a)(1).

“The approval of the parking location as filed under

application #310077092 complies with the zoning requirements. Any appeal of this decision shall be filed with the Board of Standards and Appeals.”

WHEREAS, a public hearing was held on this appeal on September 24, 2008, after due notice by publication in the *City Record*, and then to decision on October 28, 2008; and

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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by the owner of 852 70th Street (the “appellant”), a neighbor to the subject premises; and

WHEREAS, the appellant and the Department of Buildings (“DOB”) have been represented by counsel throughout this proceeding; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this appeal; and

WHEREAS, Councilmember Vincent J. Gentile provided written and oral testimony in support of this appeal; and

WHEREAS, State Senator Martin J. Golden also provided testimony in support of this appeal; and

WHEREAS, representatives of the United Neighborhood Association of Fort Hamilton Parkway and the Bay Ridge Conservancy also provided written and oral testimony in support of this appeal; and

WHEREAS, the owner of 846 70th Street (the “owner”) testified at hearing in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the installation of a ten foot curb cut for parking in the front yard of an attached home; and

WHEREAS, on January 9, 2008, DOB issued an Alteration Type 3 Permit No. 310077092 for the installation of a ten foot curb cut, made in conjunction with an Alteration Type 2 permit issued for renovation of the subject premises; and

WHEREAS, on March 25, 2008, Community Board 10, Brooklyn, wrote the Brooklyn Borough Commissioner requesting reconsideration of DOB’s approval; and

WHEREAS, on April 3, 2008, the Brooklyn Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on May 2, 2008, the appellant filed the instant appeal at the BSA; and

THE SITE

WHEREAS, the subject site consists of a two-story attached home on the south side of 70th Street, between 8th Avenue and Fort Hamilton Parkway; and

WHEREAS, the subject site is located in an R4-1 zoning district; and

WHEREAS, the owner proposes to install a new ten foot curb cut for parking in the portion of the front yard adjoining the neighboring property; and

WHEREAS, the subject site is part of a continuous grouping of 19 uniform attached rowhouses located on the 800

1 Headings are utilized only in the interests of clarity and organization.

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block of 70th Street; and
PROVISIONS OF THE ZONING RESOLUTION
RELEVANT TO THIS APPEAL

WHEREAS, in pertinent part, the following provisions of the Zoning Resolution are cited herein:

Z.R. § 25-621 (“Location of Parking Spaces in Certain Districts”) sets forth the locations where off-street parking is permitted in certain residential zoning districts; and

Z.R. § 25-621(a)(1) applies to R2X, R3, R4, and R5 zoning districts, and provides, “[i]n the districts indicated, except R4B or R5B Districts, accessory off-street parking spaces shall be permitted only in the side lot ribbon, within a building or in any open area on the zoning lot which is not between the street line and street wall or prolongation thereof of the building. Access to the accessory spaces through a front setback area or required front yard shall be only through the side lot ribbon;”

Z.R. § 25-621(a)(3) applies to R4B, R5B, R6B, R7B, and R8B zoning districts, and provides that, “[i]n the districts indicated, accessory off-street parking spaces shall be located only within a building, or in any opens area on the zoning lot which is not between the street line and the street wall of the building or its prolongation. Access to such parking spaces shall be provided only through the side lot ribbon or through the rear yard; and

Z.R. § 12-10 (“Definitions”), defines a ‘side lot ribbon’ as “that portion of the zoning lot that is contiguous to, and extends along the entire length of, a side lot line from the street line to an intersecting rear lot line, side lot line or other street line;” and

Z.R. § 23-44(a)(1) (“Permitted Obstructions in Required Yards or Rear Yard Equivalents”) provides that “[p]arking spaces, off-street, open, within a front yard are accessory to a residential building” in R2X, R3, R4 and R5 Districts . . . , provided such spaces are located in a permitted side lot ribbon;

“However, no such parking spaces shall be permitted in any front yard within a R4B or R5B District, and no such required spaces shall be permitted in any front yard within any R1, R2, R3, R4A or R4-1 District within a lower density growth management area;” and

Z.R. § 12-01 (“Rules Applying to Text of Resolution”) provides:

“(b) In case of any difference of meaning or implication between the text of this Resolution and any caption, illustration, summary table or illustrative table, the text shall control.

“(c) The word ‘shall’ is always mandatory and not discretionary. The word ‘may’ is permissive.

“(h) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction ‘and,’ ‘or,’ or ‘either...or,’ the conjunction shall be interpreted as follows:

- (1) ‘and’ indicates that all the connected items, conditions, provisions or events shall apply;
- (2) ‘or’ indicates that the connected items, conditions, provisions or events may apply singly or in any combination; and
- (3) ‘either...or’ indicates that the connected items, conditions, provisions or events shall apply singly but not in any combination;” and

ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the permit for the subject site: (i) the Zoning Resolution expressly prohibits parking in the front yard of an attached home; and in the alternative, (ii) the text of the Zoning Resolution is ambiguous and therefore the Board must look to legislative intent, which is contrary to DOB’s interpretation that parking is permitted in the front yard of an attached home; and

WHEREAS, these two arguments are addressed below; and

Challenged Parking is Expressly Prohibited by the Zoning Resolution

WHEREAS, the appellant argues that Z.R. §§ 25-621(a) and 12-10 expressly prohibit parking in the front yard of attached homes; and

WHEREAS, Z.R. § 25-621(a) provides that “off-street parking spaces shall be permitted only in the side lot ribbon, within a building or in any open area on the zoning lot which is not between the street line and street wall or prolongation thereof of the building;” and

WHEREAS, the appellant contends that Z.R. § 25-621(a) expressly prohibits parking in any portion of the front yard of an attached home because the challenged parking is within an open area between the street line and the “prolongation thereof of the building;” and

WHEREAS, the appellant elaborates that Z.R. § 25-621(a) expressly prohibits parking in any portion of the front yard of an attached home because the phrase “prolongation thereof of the building” refers to a building that extends the length of a zoning lot, such as an attached home; and

WHEREAS, the appellant also contends that Z.R. § 25-621(a) prohibits front yard parking for attached houses because the restriction on parking between “the street line and street wall or prolongation thereof of the building” restricts parking in the side lot ribbon of the front yard as well; and

WHEREAS, DOB argues, and the Board agrees, that Z.R. § 25-621(a) does not distinguish between detached, semi-detached, and attached houses in regard to front yard parking, provided that such parking is within a side lot ribbon or within a building; and

WHEREAS, further DOB argues, and the Board agrees, that the text of Z.R. § 25-621(a) imposes no limitation on where parking may be located in a side lot ribbon and because the word “or” separates the areas where off-street parking is permitted, it is clear that each area specified in the statute represents a separate location where parking is allowed; thus, parking is allowed anywhere in the side lot ribbon; and

WHEREAS, the Board also notes that, at hearing, DOB

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submitted a memorandum by the Department of City Planning (the “DCP Memo”) stating that Z.R. § 25-621(a) permits parking within the portion of the side lot ribbon that traverses a front yard, despite the overlap of the “side lot ribbon” and the open area “between the street line and street wall or prolongation thereof of the building,” and

WHEREAS, the appellant further contends that parking is not permitted within the side lot ribbon of an attached home because, pursuant to Z.R. § 12-10, side lot ribbons do not exist on lots with attached homes; and

WHEREAS, Z.R. § 12-10 defines a side lot ribbon as “that portion of the zoning lot that is contiguous to, and extends along the entire length of, a side lot line from the street line to an intersecting rear lot line, side lot line or other street line;” and

WHEREAS, the appellant contends that side lot ribbons do not exist on lots with attached houses because the definition of ‘side lot ribbon’ in Z.R. § 12-10 contemplates a side yard that is completely open to the sky from the street line to an intersecting rear lot line, and which serves as a through space to an accessory parking space in the rear of the lot; and

WHEREAS, DOB argues, and the Board agrees, that the text of Z.R. § 12-10 does not state that a side lot ribbon must be open to the sky, and does not indicate that a side lot ribbon can only exist on a lot with a side yard; and

WHEREAS, DOB states, and the Board agrees, that the definition of “side lot ribbon” in Z.R. § 12-10 allows parking “along the entire length of a side lot line,” even if there is an attached home on the lot; and

WHEREAS, the Board notes that the DCP Memo states that Z.R. § 12-10 does not require that a side lot ribbon be continuously developed as a driveway extending from the street line to the rear lot line, or that the area be continuously open to the sky; and

WHEREAS, the Board notes that, in contrast to its definition of a “side lot ribbon,” Z.R. § 12-10 defines a “yard” as “that portion of a zoning lot extending open and unobstructed from the lowest level to the sky along the entire length of a lot line”; and

WHEREAS, the Board therefore concludes that the appellant is apparently urging the Board to interpret the definition of a “side lot ribbon” as coextensive with that of a “side yard,” despite the fact that Z.R. § 12-10 specifically requires a side yard to be “unobstructed from the lowest level to the sky,” while the definition of a side lot ribbon lacks such language; and

WHEREAS, the Board cannot expand the definition of a side lot ribbon to require it to be unobstructed, because a statute cannot be extended by construction beyond its express terms or reasonable implications to its language (see Statutes § 94 (N.Y. Cons. L. 2008)); and

WHEREAS, therefore, a finding that a side lot ribbon must be open to the sky cannot be imputed, absent specific language in the Zoning Resolution providing so; and

WHEREAS, the appellant argues that the text of Z.R. § 25-621(a) restricting parking between “the street line and street wall or prolongation thereof of the building” also restricts parking in the side lot ribbon of the front yard; and

WHEREAS, Z.R. § 25-621(a) provides that off-street parking is permitted in “the side lot ribbon, within a building or in any open area on the zoning lot not between the street line and street wall” (emphasis added); and

WHEREAS, the appellant claims that pursuant to Z.R. § 12-01(h)(2), the “or” in Z.R. § 25-621(a) requires the three types of areas where parking is permitted to be read in combination; and

WHEREAS, therefore, the appellant argues that parking is not permitted within a side lot ribbon if it’s in an open area between the street line and street wall;

WHEREAS, the Board however notes that the provision describes three discrete types of areas where parking is permitted, because the word “or” indicates that the connected items “may apply singly or in any combination,” pursuant to Z.R. § 12-01(h); and

WHEREAS, the Board further notes that under the Rules for Construction of Language in the Zoning Resolution, the word “shall” is always mandatory, while the word “may” is permissive; (see Z.R. § 12-01(c)) and that, unless the context clearly indicates the contrary, where a regulation involves two or more items connected by the word “and,” it indicates that all the connected items shall apply, but if the items are connected by the word “or,” the connected items “may apply singly or in any combination” (see Z.R. § 12-01(h)); and

WHEREAS, the Board observes that the use of the word “or” rather than “and” in the cited portion of Z.R. § 25-621(a) indicates that the application of the connected items is permissive and not mandatory and therefore that parking is permitted in a side lot ribbon and does not need to be read in combination with or be restricted by an open area which is not between the street line and the street wall; and

WHEREAS, the Board concludes Z.R. § 25-621(a) restricts parking between the “street line and street wall or prolongation thereof of the building” within the area of the front yard that is not within the side lot ribbon; and

WHEREAS, the Board notes that the Zoning Resolution Rules of Construction codified in ZR § 12-10 support a finding that the language of Z.R. § 25-621(a) is clear and unambiguous; and

WHEREAS, the appellant has failed to offer a convincing rationale to read Z.R. § 25-621(a) in a way that is contrary to the plain meaning of the text; and

WHEREAS, further, under New York law, where statutory language is clear and unambiguous, it must be construed according to the plain meaning of the words used,” *Patrolmen’s Benevolent Assn. v. City of New York*, 41 N.Y. 2d 205 (1976); and

WHEREAS, the Board therefore rejects the appellant’s argument that the text of Z.R. § 25-621(a) restricting parking between “the street line and street wall or prolongation thereof of the building” should be interpreted to also restrict parking in the side lot ribbon of the front yard; and

WHEREAS, DOB additionally contends that parking within the front yard of an attached home is permitted because it is a permitted obstruction in an R4-1 zoning district pursuant to Z.R. § 23-44(a), provided that the parking is located within the side lot ribbon; and

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WHEREAS, the DCP Memo further provides that parking in a side lot ribbon of the front yard is specifically allowed as a permitted obstruction under Z.R. § 23-44(a); and

WHEREAS, the appellant argues that, because Z.R. § 23-44(a) requires that the front yard parking space be located within a side lot ribbon, and side lot ribbons do not exist on lots with attached homes, Z.R. § 23-44(a) is therefore inapplicable to the subject lot; and

WHEREAS, the Board notes that, as discussed above, a side lot ribbon is an existing portion of a zoning lot even when the lot is occupied by an attached home and has no side yard; and

WHEREAS, DOB contends, and the Board agrees, that the subject parking space is located within a side lot ribbon, and is therefore authorized as a permitted obstruction under Z.R. § 23-44(a); and

WHEREAS, the Board notes that it is a fundamental rule of statutory construction that all parts of a statute are to be read together and construed as a whole; and

WHEREAS, the Board finds that the plain language of Z.R. §§ 25-621(a), 12-10, and 23-44(a), when read together, clearly permit parking within the side lot ribbon of an attached home within an R4-1 zoning district; and

WHEREAS, the Board therefore rejects the appellant's argument that Z.R. §§ 25-621(a) expressly prohibits parking within the side lot ribbon of an attached home in an R4-1 zoning district; and

Challenged Parking is Prohibited by the Intent of the Zoning Resolution

WHEREAS, in the alternative, the appellant contends that the Board should look beyond the plain meaning of the New York City Zoning Resolution to find that the challenged parking is prohibited based on: (1) the prohibition on parking in the front yard of attached homes in R4B and R5B zoning districts; and (2) the inferred intent underlying Z.R. §§ 25-621(a) and 12-10; and

WHEREAS, the appellant contends that the intent of the Zoning Resolution to prohibit parking in the front yard of an attached home in an R4-1 zoning district can be inferred from the language of Z.R. § 25-621(a), which prohibits parking in the front yards of attached homes in R4B and R5B zoning districts; and

WHEREAS, the appellant contends that because the subject R4-1 zoning district is characterized by attached rowhouses, which are also common to R4B and R5B zoning districts, that the restriction on parking in R4B and R5B zoning districts in Z.R. § 25-621 should likewise be extended to prohibit parking in the front yards of attached homes in R4-1 zoning districts; and

WHEREAS, the Board notes that § 25-621 specifically prohibits parking in the front yards of attached homes in R4B and R5B zoning districts, while the provision is silent concerning parking in the subject R4-1 zoning district; and

WHEREAS, the Board further notes that if all attached homes were meant to be exempted from provisions permitting accessory off-street parking in front yards, as the appellant contends, the restriction on front yard parking listed in Z.R. §§ 25-621(a) and 23-44(a) for R4B and R5B zoning districts

would be redundant and unnecessary; and

WHEREAS, however, there is no reason to presume that these provisions are superfluous; thus, the Board finds that the exemption on front yard parking in Z.R. §§ 25-621(a) and 23-44 applies only to R4B and R5B districts and cannot be applied to prohibit parking in front yards of R4-1 districts; and

WHEREAS, the Board notes again that the plain meaning of the Zoning Resolution with respect to the application of Z.R. § 25-621(a) to the subject zoning district is unambiguous; and

WHEREAS, under New York law, the Board is not permitted to look beyond the plain meaning of the text to ascertain the intent of the Zoning Resolution, but is limited to the "four corners" of the statute (see Statutes § 94 (N.Y. Cons. L. 2008)); and

WHEREAS, the Board is also aware that it must presume that the framers of the Zoning Resolution deliberately drafted the relevant zoning text with a specific purpose; and

WHEREAS, the DCP Memo states that the purpose of the Lower Density Contextual Zoning text amendments was to prohibit front yard parking in R4B and R5B districts, specifically; and

WHEREAS, the appellant has submitted no evidence contradicting the clear statement of intent submitted by the Department of City Planning, the agency which frames the Zoning Resolution, to support an inference that Z.R. § 25-621(a) was intended to prohibit parking in the front yards of attached homes in R4-1 zoning districts; and

WHEREAS, for the reasons stated, the Board finds that the restrictions on parking in R4B and R5B districts provide no evidence of an intent on the part of the framers to impose restrictions on parking in an R4-1 district which are not found within the plain language of ZR § 25-621; and

WHEREAS, the appellant contends that the intent of the Zoning Resolution to prohibit front yard parking in R4-1 districts is also demonstrated by a 1989 Department of City Planning report entitled "Lower Density Contextual Zoning Study" ("DCP Report") and by the agency's 1990 Zoning Handbook and the 2006 Zoning Handbook; and

WHEREAS, in support of its position, the appellant points to illustrations of side lot ribbons in the DCP Report, the 1990 Zoning Handbook, and the 2006 Zoning Handbook, each of which depict the side lot ribbon as an open area located within a side yard that serves as a through space to an accessory parking space located to the rear of a property; and

WHEREAS, the Board notes that, under New York law, where the legislative language is clear, as in the instant appeal, there is no occasion for examination into extrinsic evidence to discover legislative intent (See Statutes § 120 (N.Y. Cons. L. 2008, see also *Raritan Dev. Corp. v. Silva*, 91 N.Y.2d (1997) (when a provision in the Zoning Resolution is unambiguous, reliance on external statutes or sources is erroneous)); and

WHEREAS, DOB argues, and the Board agrees, that the legislative language in Z.R. §§ 25-621(a) and 12-10 is unambiguous, and therefore, the illustrations of side lot ribbons in the DCP Report, the 1990 Zoning Handbook, and the 2006 Zoning Handbook, cannot serve as support for an alternative interpretation of the statute; and

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WHEREAS, the Board further notes that the illustrations cited by the appellant are not dispositive of every condition where parking may occur, and observes that a 1990 DCP study entitled "Lower Density Contextual Zoning" ("DCP Study") contains an illustration indicating that front yard parking is contemplated within the side lot ribbon of an attached home; and

WHEREAS, the appellant also contends that the DCP Report demonstrates that the framers of Z.R. § 12-10 did not intend for a side lot ribbon to exist on a lot with an attached home, because the stated objective for creating the side lot ribbon was to prevent continuous curb cuts and to encourage unopened space in the front yard; and

WHEREAS, the Board observes that the appellant's argument is contradicted by the "Parking Location" section of the DCP Report, which states that the side lot ribbon "would pass through the front yard, a side yard or a building...and the rear yard" (emphasis added), which establishes, again, that a side lot ribbon traverses a front yard and can run uninterrupted through an attached home, such as in the instant appeal; and

WHEREAS, the DCP Memo further indicates that the purpose for creating the side lot ribbon was to regulate the width and placement of driveways on narrow lots, to preserve the ability to plant front yards and to ensure sufficient on-street parking between curb cuts on adjacent lots, and not to prevent parking in front yards; and

WHEREAS, in addition, the Board notes that, consistent with the DCP Report, the DCP Memo points out that Z.R. § 23-141 allows a floor area bonus if a detached garage is provided in the portion of the rear yard within the side lot ribbon, and

WHEREAS, the appellant also contends that the provisions in the DCP Report concerning parking in R4B districts demonstrate that the framers of Z.R. § 25-621(a) intended to include R4-1 zoning districts among those districts in which front yard parking is prohibited for attached houses; and

WHEREAS, the appellant points to a provision in the DCP Report, under the heading "R4B," which states, "[f]or subdivisions creating detached or semi-detached houses, R4-1 curb cut location regulations would apply. Parking would have to be within a building, or in a side or rear yard. For attached houses, regardless of subdivisions, parking must be grouped, and within a building or yard other than a front yard;" and

WHEREAS, the appellant argues that the language restricting parking in the front yard of "attached houses, regardless of subdivisions," is evidence of an intent to restrict parking in the front yard of attached houses in R4-1 districts; and

WHEREAS, the Board notes that there is no indication that the cited DCP Report was meant to apply beyond R4B zoning districts, and

WHEREAS, accordingly, the Board therefore finds that the cited documents provide no support for the proposition that the underlying intent of Z.R. §§ 25-621(a) and 12-10 was to preclude parking in the side lot ribbon of an attached home within the R4-1 district; and

WHEREAS, the appellant has therefore provided no

evidence supporting a finding that parking in the side lot ribbon of an attached home in an R4-1 zoning district is expressly or impliedly prohibited by the Zoning Resolution; and

WHEREAS, the Board finds therefore that the subject premises complies with all legal requirements for the issuance of an alteration permit for the installation of a curb cut in an R4-1 zoning district, and that there is therefore no basis for the revocation of the permit; and

Therefore it is Resolved, that the instant appeal is denied.

Adopted by the Board of Standards and Appeals, October 28, 2008.

306-05-BZY

APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.

SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (§11-331) of a major/minor development under the prior Zoning District regulations.

PREMISES AFFECTED – 206A Beach 3rd Street, Block 15604, Lot 34, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gregory Chillino.

For Administration: Kelly Kamen, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.

SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Hakime Altine.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for continued hearing.

251-07-A thru 254-07-A

APPLICANT – Eric Palatnik, P.C., for Willow/Houston, LLC, owner.

SUBJECT – Application November 2, 2007 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3A zoning district. R3X zoning district.

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PREMISES AFFECTED – 63/65 Houston Street and 104/106 Willowbrook Road, Block 1478, Lots 542, 543, 150 & 151, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: James E. Scott and Stacey Murphy.

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for continued hearing.

266-07-A

APPLICANT – Stuart A. Klein, for 1610 Ave S, LLC, owner.

SUBJECT – Application November 21, 2007 – An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R6 district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1st Lane, a/k/a 209-213 Brighton 1st Lane, north side of Brighton 1st lane, 63.19'W of Brighton 1st Street, Block 8670, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Abruil Pakerson.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for continued hearing.

191-08-BZY

APPLICANT – Stuart A. Klein, for 1610 Avenue S, LLC, owner.

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (§11-331) of a minor development

commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

PREMISES AFFECTED – 1610 Avenue S, Block 7295, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for decision, hearing closed.

149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.

SUBJECT – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 808 Columbus Avenue, 97th and 100th Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 18, 2008, at 10 A.M., for postponed hearing.

202-08-BZY

APPLICANT – Greenberg Traurig by Deirdre Carson, for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to a text amendment on July 23, 2008. R6 Zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, Block 459, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: James W. Devor, Evans Akselrap, John Hatheway, Rita Miller, James Biber, Lucy DeCarlo and Traila Famara.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

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212-08-A

APPLICANT – Greenberg Traurig by Deirdre Carson for Oliver Development, LLC, owner.

SUBJECT – Application August 1, 2008 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior zoning district regulations. R6 zoning district.

PREMISES AFFECTED – 131 Second Place, northwest corner of Second Place and Smith Street, block 459, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: James W. Devor, Evans Akselrap, John Hatheway, Rita Miller, James Biber, Lucy DeCarlo and Traila Famara.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

217-08-BZY

APPLICANT – Bryan Cave LLP by Margery Perlmutter, for Steven Reich, owner.

SUBJECT – Application October 28, 2008 – Extension of time to complete construction (§11-332) of an enlargement to an existing development commenced prior to the text amendment on July 23, 2008. R6 zoning district.

PREMISES AFFECTED – 126 First Place, southside of First Place, 300' east of the intersection of Court Street and First Place, Block 459, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Chaney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 28, 2008
1:30 P.M.**

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

ZONING CALENDAR

39-06-BZ

CEQR #06-BSA-061K

APPLICANT – Moshe M. Friedman, P.E., for Rachel Klagsbrun, owner.

SUBJECT – Application March 8, 2006 – Variance (§72-21) to allow the legalization of two (2) dwelling units (U.G. 2) in an existing three-story industrial building. Ground floor is proposed to be retained as manufacturing space (U.G. 17d). M1-2 zoning district.

PREMISES AFFECTED – 245 Varet Street, north side 100' east of intersection of White Street and Varet Street, Block 3110, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Yosef S. Gottdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Brooklyn Borough Commissioner, dated February 21, 2006, acting on Department of Buildings Application No. 301269106, reads:

“Proposed conversion of Manufacturing (UG 17) Building to Two Family and Manufacturing (UG 2 & 17) is contrary to ZR 42-00”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the legalization of two dwelling units (UG 2) in an existing three-story manufacturing building; and

WHEREAS, a public hearing was held on this application on July 17, 2007, after due notice by publication in the *City Record*, after which the hearing was closed and a decision was set for September 18, 2007; and

WHEREAS, on September 18, 2007 the Board deferred the decision to October 30, 2007; the decision was subsequently deferred to January 8, 2008, February 26, 2008, April 15, 2008, June 24, 2008 and August 26, 2008, at the request of the applicant; and

WHEREAS, the matter went to decision on October 28, 2008; and

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

Commissioner Hinkson; and

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

WHEREAS, representatives of the East Williamsburg Valley Industrial Development Corporation and a nearby manufacturing business (collectively, the “Opposition”) provided written and oral testimony concerning the potential impact of the legalization on the retention of manufacturing jobs within the North Brooklyn Industrial Business Zone; and

WHEREAS, the site is located on the north side of Varet Street between White and Bogart Streets, within an M1-2 zoning district; and

WHEREAS, the site has 50 feet of frontage on Varet Street and is 90 feet deep; and

WHEREAS, the site is currently occupied by a three-story manufacturing building built in 1931, with a total floor area of 10,188 sq. ft. (3,396 sq. ft. on each floor) and an FAR of 2.26, with conforming manufacturing use on the ground floor and two non-conforming dwelling units on the second and third floors; and

WHEREAS, as noted, the applicant proposes to legalize the existing dwelling units on the second and third floors, with manufacturing use to remain on the ground floor; and

WHEREAS, the second and third floors have been occupied by dwelling units for the last 17 years; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the building is obsolete for manufacturing use; and (2) the narrow street does not permit access by large trucks; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to its small floor plate, and lack of an elevator and loading dock; and

WHEREAS, as to the building’s floor plate, the applicant represents that a floor plate of 3,396 sq. ft. cannot accommodate modern manufacturing use; and

WHEREAS, an analysis submitted by the applicant showed that most sites occupied by manufacturing uses in the surrounding neighborhood had significantly larger floor plates; and

WHEREAS, as to the lack of an elevator, the applicant represents that no manufacturer will occupy a property which relies only on a narrow staircase for moving materials between floors; and

WHEREAS, an analysis submitted by the applicant indicates that among the six buildings similar to this building in use and size, this is the only one that is further disadvantaged by having no elevator for the transfer between floors; and

WHEREAS, the applicant also states that the lack of a loading dock and the narrowness of Varet Street constrain the building from accommodating the deliveries required of modern manufacturers; and

WHEREAS, the applicant represents that Varet Street’s width of approximately 60 feet is too narrow to permit access by the tractor-trailer trucks which are now used by modern manufacturers; and

WHEREAS, the Board finds that the roadway’s width, in

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and of itself, would not create a hardship, but that the combination of the small floor plate, and lack of elevator and loading berths, creates unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing three alternatives: (1) the existing building used in conformance with M1-2 zoning district regulations; (2) a new as-of-right manufacturing building with an FAR of 2.0; and (3) the proposed mixed-use building with residential use on the second and third floors and manufacturing use on the ground floor; and

WHEREAS, the applicant's financial analyses showed that neither the existing building, nor the as-of-right building proposal, provide a reasonable rate of return; and

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

WHEREAS, the applicant represents that the proposed residential use of the second and third floors 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, although zoned M1-2, the applicant represents that the actual land uses in the area are compatible with residential use; and

WHEREAS, the applicant represents that the Varet Street block where the site is located is characterized generally by a mix of commercial, manufacturing and residential uses; and

WHEREAS, based on the land use survey submitted to the Board, the applicant further represents that the proposed building would fit into the mixed-use character of the neighborhood; and

WHEREAS, based on its site examinations, the Board notes that there is some nearby residential use, but that the neighborhood character appears to be predominately industrial and commercial; and

WHEREAS, however, the Board finds that the legalization of two residential units which have been occupied for 17 years would not be expected to change the essential character or affect the surrounding uses of the neighborhood; and

WHEREAS, the Opposition submitted oral and written testimony concerning the possible effects the proposal may have on conforming uses in the nearby Industrial Business Zone and on a specific manufacturing use in the vicinity of the building; and

WHEREAS, in response to a request by the Board, the applicant notes that the subject site is outside the boundaries of the Industrial Business Zone in a designated Mixed Use Area which includes many legal residential multi-family and mixed use buildings; and

WHEREAS, the applicant also notes that the subject residential use has been in existence at the site for 17 years and will not be expanded; and

WHEREAS, the applicant further notes that the impact of

the legalization on the nearby manufacturer would be minimal as it has direct access to a major artery and would therefore be unlikely to use Varet Street for truck transport; and

WHEREAS, based upon the above, the Board finds that the proposed legalization of two residential units will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor 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 waiver to legalize two existing units will have little or no affect on the surrounding community; and

WHEREAS, accordingly, the Board finds that the current 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 Part 617 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. 06BSA061K, dated March 2, 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, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: (i) a March 2006 Environmental Assessment Statement (EAS); (ii) a September 2006 Phase I Environmental Site Assessment report; (iii) a November 2007 Phase II Investigation Workplan; and (iv) an August 2008 benzene analysis; and

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

WHEREAS, regarding air quality impacts of the proposed project; in its letter of October 23, 2008, DEP stated that the agency had determined that pollutants from the first floor manufacturing use are not anticipated to result in significant air quality impacts on the second and third floor residential uses; and

WHEREAS, DEP has further determined that that the project would not result in significant stationary or mobile source noise impacts or hazardous materials impacts, as confirmed by its letter of October 23, 2008; and

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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, on a site within an M1-2 zoning district, the legalization of two dwelling units in an existing three-story manufacturing building, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 8, 2006"- four (4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 10,188 sq. ft. (3,396 sq. ft. on each floor) and an FAR of 2.26, as illustrated on the BSA-approved plans;

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

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

THAT construction will proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

243-07-BZ/244-07-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application October 29, 2007 – Variance (§72-21) to construct a three story, one family residence on a irregular, vacant, triangular lot in a Lower Density Growth Management (LDGM) area. This application seeks to vary floor area and open space (§23-141); less than the minimum front yards (§23-45) and less than the required amount of parking (§23-622) in an R3-2 zoning district.

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street, Block 1123, Lot 120, 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, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated September 4, 2008, acting on Department of Buildings Application No. 510007760, reads in pertinent part:

1. 'The proposed construction is located within the bed of a mapped street contrary to section 35 of the General City Law;
2. Proposed one-family, detached residential building (Use Group 1) in residential zoning district R3-2 has a floor area that exceeds maximum permitted per section 23-141;
3. Proposed open space is deficient in area contrary to section 23-141 ZR;
4. Front yards are less than minimum required contrary to section 23-45 ZR;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district within a Lower Density Growth Management Area (LDGMA), the proposed construction of a two-story and cellar single-family home that exceeds the allowable floor area and which does not provide the required front yards or open space, contrary to ZR §§ 23-141, and 23-45, and

WHEREAS, a companion application was filed under BSA Cal. No. 244-07-A to permit construction in the bed of a mapped street; and

WHEREAS, in the interest of convenience, a public hearing was held on both applications on June 3, 2008, after due notice by publication in *The City Record*, with continued hearings on July 15, 2008, August 26, 2008, September 23, 2008, and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommended disapproval of an earlier iteration of this application; and

WHEREAS, Council Member Michael E. McMahon provided written testimony in opposition to the application; and

WHEREAS, a number of local residents testified in opposition to the application citing concerns with parking and over-development; and

WHEREAS, the site is located on a triangular property at the northwest corner of the intersection of John Street and Douglas Street, in an R3-2 zoning district; and

WHEREAS, the site has 58 feet of frontage on John Street, 47 feet of frontage on Douglas Street and a border of 74.65 feet contiguous with property owned by the State Island Railroad; and

WHEREAS, the site has a total lot area of approximately 1,363 sq. ft. and is vacant; and

WHEREAS, the applicant provided a title company

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certification establishing that the site existed as a separate zoning lot from the adjoining lot as of December 15, 1961; and

WHEREAS, the applicant initially proposed to construct a three-story single-family home with a floor area of 1,360 sq. ft. (approximately 818 sq. ft. is the maximum permitted); a floor area ratio of 1.0 (an FAR of 0.6 is the maximum permitted); and one off-street parking space (two spaces are required); and

WHEREAS, the applicant revised the proposal during the hearing process; the now two-story and cellar home is proposed to have a floor area of 1,060 sq. ft, an FAR of 0.78, and two at-grade parking spaces to the rear; and

WHEREAS, additionally, the applicant proposes a single front yard of 5'-0" (two front yards with minimum widths of 15'-0" and 10'-0" are required); and open space of 61 percent (65 percent is the minimum required), and

WHEREAS, the site has a lot area of approximately 1,363 sq. ft. and a minimum lot area of 3,800 sq. ft. is required by the R3-2 zoning and the LDGMA requirements; and

WHEREAS, the applicant has provided documentation establishing that it is a preexisting undersized lot and is therefore exempt from the minimum lot area requirements pursuant to ZR § 23-33; and

WHEREAS, the Board notes that Z.R. § 23-33 would eliminate a lot area requirement for a single-family dwelling, but not the floor area, open space and front yard objections; and

WHEREAS, the applicant states that the floor area, lot coverage and front yard relief are 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 undersized narrow triangular shape of the subject site; and

WHEREAS, the applicant represents that without the requested floor area, open space and front yard waivers no habitable building could be built on the site; and

WHEREAS, the applicant states that the two streets and the Staten Island Rapid Transit right of way bounding the subject site create a nearly perfect right triangle; and

WHEREAS, the applicant provided a site plan indicating that compliance with the applicable bulk regulations would result in a home measuring 17.5 feet by 21.5 feet by 27.5 feet with a maximum floor plate of 188 sq. ft.; and

WHEREAS, the applicant represents that a home with such dimensions and with a triangular-shaped floor plate would be uninhabitable; and

WHEREAS, the applicant is required by the LDGMA regulations to provide two off-street parking spaces; and

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

WHEREAS, the applicant submitted plans which reflect the constraints associated with providing two off-street parking spaces on such a narrow, small and irregularly-shaped site with a modestly sized home, particularly since there is no option to provide parking in the front yard; 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 floor area, open space, and front yard regulations; and

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

WHEREAS, the Board notes that because the subject site is a pre-existing lot, the owner has a right to build on the site; 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 further represents that the height and bulk of the proposed home is compatible with nearby residential development; and

WHEREAS, the applicant initially proposed to construct a three-story home with a floor area of 1,360 sq. ft. (FAR of 1.0) and one off-street parking space; and

WHEREAS, at hearing the Board raised several issues concerning: (1) the need for a floor area waiver; (2) the configuration of the home and its relationship in scale to the surrounding neighborhood; and (3) the need to waive a parking space; and

WHEREAS, the applicant represented that the 818 sq. ft. home permitted under the zoning is significantly smaller than the size of homes in the neighborhood and was therefore not feasible; and

WHEREAS, the applicant submitted property sales data tabulating each home sale during a recent 24-month period within the zip code area of the subject site;

WHEREAS, the Board notes that this data indicates that the proposed home is considerably smaller than 63 of the 66 homes sold; and

WHEREAS, the sales data demonstrates that 34 homes have floor areas ranging from 1,200 sq. ft. to 2,500 sq. ft., and that 29 of the homes have square footages in excess of 2,501 sq. ft.; and

WHEREAS, the sales data show that only three homes were sold with square footages of less than 1,200 sq. ft., but that none of the 66 homes has a floor area equal to or less than the complying floor area for the subject site of 818 sq. ft.; and

WHEREAS, the applicant initially proposed a three-story home with a perimeter wall height of 25'-0", a total building height of 30'-0", and a parking space in the first floor, which raised the height of the home; and

WHEREAS, the Board notes that while the proposed perimeter wall height and total height is permitted by the zoning district, the immediate area is characterized by two-story with attic homes; and

WHEREAS, applicant subsequently modified the proposal to provide two parking spaces in the open area of the lot along the site lot line, thereby eliminating the need for a parking waiver; and

WHEREAS, the modification also lowered the building to a two-story with cellar home with a perimeter wall height of 20'-2" and a total building height of 24'-0",

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which is more compatible with the homes in the surrounding area; and

WHEREAS, the Board notes that the total building height of 24'-0" is significantly lower than the 35'-0" building height permitted as-of-right; and

WHEREAS, the applicant notes that the site is formed by the intersection of two streets and is bordered by railroad tracks to its rear, and represents that the impact of the proposed variance is therefore limited by its distance from neighboring homes, as well as by the modest size of the proposed home; and

WHEREAS, the applicant further represents that the impact of the front yard waiver is partly offset by the provision of a 10-foot sidewalk and by the planting of street trees along both John Street and Douglas Street; and

WHEREAS, the Board notes that the applicant now complies with the parking requirements of the Lower Density Growth Management District; and

WHEREAS, Council Member McMahon raised concerns that the building of a home within the bed of a mapped street could preclude future transportation improvements; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan and, therefore, no transportation improvements requiring the street are contemplated; 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 applicant has established that the subject site was owned separately and independently of the adjoining lot as of December 15, 1961; 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, the applicant initially proposed to construct a three-story home with a floor area of 1,360 sq. ft.; a floor area ratio of 1.0, and one off-street parking space; and

WHEREAS, during the hearing process, the Board asked the applicant to explore alternative development scenarios that would reduce the height, the requested floor area and which would provide the required parking; and

WHEREAS, in response, the applicant revised the proposal; the proposed home will now have two stories and a cellar, a floor area of 1,060 sq. ft., a floor area ratio of 0.78, and two at-grade parking spaces to the rear; 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and

makes the required findings under ZR § 72-21 to permit, within an R3-2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story with cellar single-family home that exceeds the permitted floor area and does not provide the required open space or front yards, contrary to ZR §§ 23-141, and 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 9, 2008" – (7) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,060 sq. ft. of floor area; an FAR of 0.78, open space of 61 percent; one front yard of 5'-0", a wall height of 20'-2", and a total building height of 24'-0", and two parking spaces, as per the BSA-approved plans;

THAT the use of the cellar shall be limited to storage and mechanical space;

THAT the above condition shall be included on the Certificate of Occupancy;

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

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

THAT significant construction shall proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

257-07-BZ

CEQR #08-BSA-033M

APPLICANT – Gordon J. Davis c/o Dewey & LeBoeuf, for The Mount Sinai Hospital and Mount Sinai, owners; One Gustave L. Levy Place, lessees.

SUBJECT – Application November 17, 2007 – Variance (§72-21) to permit the construction of an eleven-story, approximately 269,000 square foot Center for Science and Medicine Building at the Mount Sinai Medical Center. The proposal is contrary to sections §24-522 (height, setbacks, and sky exposure plane for community facility), §24-11 (community facility lot coverage), and §24-54 (community facility tower coverage).

PREMISES AFFECTED – 3 East 101st Street, 11 East 101st Street, 65 and 4-20 East 102nd Street, Block 1607, Lots 3, 5, 59, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Gordon Davis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decisions of the Manhattan Borough Commissioner dated October 19, 2007, acting on Department of Buildings Application Nos. 104631141 and 1046311501 reads in pertinent part:

1. Proposed height and setback and sky exposure plane for community facility portion of building is contrary to section ZR 24-522
2. Proposed community facility tower coverage is contrary to section ZR 24-54
3. Proposed lot coverage is contrary to section ZR 24-11;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R9 zoning district, partially within the Special Park Improvement District2 (the “Special District”), the proposed construction of an eleven-story Center for Science and Medicine building (hereinafter, the “CSM Building”), with mechanical facilities located in the base of an adjacent residential building on the same zoning lot, for Mount Sinai Hospital and Mount Sinai School of Medicine of New York University (collectively, “Mount Sinai”) to be occupied by community facility use, that does not comply with zoning parameters for community facility lot coverage, height and setback, sky exposure plane, and community facility tower coverage, contrary to ZR §§ 24-11, 24-522, and 24-54; and

WHEREAS, the application is brought on behalf of Mount Sinai Hospital and Mount Sinai School of Medicine of New York University, a non-profit hospital and a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2008, after due notice by publication in the *City Record*, with a continued hearing on July 15, 2008, after which the hearing was closed and a decision was set for August 19, 2008; and

WHEREAS, the Board reopened the hearing on August 19, 2008 and deferred the decision to September 9, 2008; and

WHEREAS, on September 9, 2008 the Board deferred the decision to September 23, 2008; the decision was subsequently deferred to October 7, 2008 and October 28, 2008, at the request of the applicant; and

WHEREAS, the matter went to decision on October 28, 2008; and

1 Department of Buildings Application No.104631141, relating to proposed construction of the CSM Building at 1470 Madison Avenue and Application No. 104631150, relating to construction of a residential building 4 East 102nd Street (the “Residential Building”) enumerate identical objections because they apply to the same Zoning Lot.

2 The Board notes that the proposed building is located on a portion of the Zoning Lot that is wholly outside the Special Park Improvement District.

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

WHEREAS, Community Board 11, Manhattan, recommends disapproval of this application, citing concerns that: (1) the applicant has failed to establish the necessary variance findings; (2) an adjacent residential tower proposed by Mount Sinai is not compatible with neighborhood character; and (3) Mount Sinai has created its own hardship by selling a portion of its Zoning Lot to be used for purposes unrelated to Hospital use; and

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

WHEREAS, City Council Member Melissa Mark-Viverito provided testimony in opposition to the application; and

WHEREAS, civic organizations, including the East Harlem Preservation, Defenders of the Historic Upper East Side, Carnegie Hill Neighbors, and Friends of the Upper East Side Historic Districts, and certain area residents and other individuals, provided written and oral testimony in opposition to the application; and

WHEREAS, additionally, CIVITAS, represented by counsel (hereinafter, the “Opposition”), also appeared at hearing, and made submissions into the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, as well as other items, and are addressed below; and

WHEREAS, representatives of the East Harlem Chamber of Commerce, 1199 ACLU Health Care Workers Union, Carver Houses Tenants Association, Positive Workforce, and the Terence Cardinal Cooke Health Care Center, and certain area residents provided testimony in support of the application; and

WHEREAS, the subject site consists of tax lots 3, 5, and 59, which together comprise a single zoning lot (the “Zoning Lot”); and

WHEREAS, Lot 3 (3 East 101st Street) is occupied by Mount Sinai’s Nurses’ Residence (the “Nurses’ Residence”), which will not be altered; Lot 5 (11 East 101st Street/1470 Madison Avenue) and Lot 59 (4-20 East 102nd) are occupied by other Hospital buildings, which are proposed to be demolished; and

WHEREAS, the applicant notes that, without changing the boundaries of the Zoning Lot, Mount Sinai proposes to reconfigure the boundaries of the existing tax lots to create new tax lots which will correspond to the proposed site plan; and

WHEREAS, the Zoning Lot occupies the eastern portion of Block 1607, and is bounded by East 102nd Street, East 101st Street, and Madison Avenue; the western portion of the Zoning Lot (to a depth of 50 feet) is within the Special District and no construction is proposed within it; and

WHEREAS, the Zoning Lot has a total lot area of 64,586 sq. ft., with a length of 320 feet along East 101st Street and East 102nd Street and a depth of 201 feet along

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Madison Avenue; and

WHEREAS, the Zoning Lot is located at the northern end of Mount Sinai's Upper Manhattan campus, which runs from East 98th Street to the north side of East 102nd Street, between Fifth Avenue and Madison Avenue; and

WHEREAS, the Zoning Lot is currently occupied by the following four Hospital buildings: (1) the Basic Sciences Building, a three-story, windowless building built in 1912 as a bus garage; (2) the Primary Care Center, a two-story building designed for temporary use; (3) 19 East 101st Street, a small one-story building occupied by a security office and staff and student health care services, which will be relocated on the larger Hospital campus; and (4) the Nurses' Residence, a twelve-story building used primarily as staff housing which will remain in use and occupancy during and after the proposed development of the CSM Building; and

WHEREAS, the proposed CSM Building will be located at the east side of the Zoning Lot, primarily on Lots 5 and 59, with frontage on Madison Avenue, East 101st Street, and East 102nd Street; a portion of the mechanicals for the CSM Building will be located in the lower levels (within a portion of floors one, two, six, and seven, within all of floors three through five and the first-floor mezzanine) and on the roof of an adjacent residential building which will front on East 102nd Street (the "Residential Building"), built primarily on Lot 59; and

WHEREAS, the Residential Building will include a total of 56,000 sq. ft. of community facility mechanical space; and

WHEREAS, the Residential Building also includes a 200-car below-grade accessory parking garage; and

WHEREAS, the applicant represents that the Residential Building requires no waivers other than those associated with the community facility use and complies with the R9 building envelope and floor area parameters; and

WHEREAS, the Residential Building is to be reviewed and approved by DOB; and

WHEREAS, the CSM Building will have a total floor area of 269,200 sq. ft., with 11 stories, and a height of approximately 187 feet along Madison Avenue, without setbacks; and

WHEREAS, the first through fourth floors are proposed to be occupied by approximately 50,000 sq. ft. of clinical facilities, 8,000 sq. ft. of research imaging space, 16,000 sq. ft. of meeting and educational space, and 20,000 sq. ft. of core laboratory and laboratory support space, as well as building support space and public lobbies; the fifth through tenth floors will be occupied by 169,000 sq. ft. of research laboratories and related functions and a 5,500 sq. ft. conference/lounge area; mechanical space will be located on the 11th floor and two below-grade levels will be occupied by 35,000 sq. ft. of research imaging space and 25,000 sq. ft. of laboratory support space, which do not contribute to the building's total floor area; and

WHEREAS, the main entrance and public lobby will be located on Madison Avenue; and

WHEREAS, the proposed building and subject Zoning Lot would have the following parameters: (1) community facility lot coverage of 45,675 sq. ft. (43,981 sq. ft. is the maximum permitted); (2) street wall height and total building height (including mechanicals) of approximately 187 feet from the curb level of East 101st Street and Madison Avenue and approximately 181 feet from the curb level of 102nd Street (85'-0" is the maximum height permitted), without a setback (a setback of 15'-0" is required on Madison Avenue; setbacks of 20'-0" are required on East 101st Street and on East 102nd Street); and (3) community facility tower coverage of 45,625 sq. ft. (25,834 sq. ft. is the maximum permitted); and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the waivers are sought to enable Mount Sinai to construct a facility that meets its programmatic needs; and

WHEREAS, as to these programmatic needs, the applicant represents that Mount Sinai is both a non-profit medical facility and a non-profit educational institution, with a mission to develop a state-of-the art medical, science and research facility with floor plates that facilitate interdisciplinary translational research (research in which results are quickly transferred from laboratory to clinic) and laboratories which are closely proximate to Mount Sinai's related clinical research and clinical care facilities; and

WHEREAS, the applicant further represents that retaining the functioning Nurses' Residence on the Zoning Lot is another programmatic need; and

WHEREAS, the applicant states that its research grant funding has doubled in the last six years and, since Mount Sinai has added no research space during that period, all available research facilities on the Campus are being used to capacity and there is no room to expand within Mount Sinai's existing buildings; and

WHEREAS, the applicant represents that Mount Sinai cannot fulfill its research mission, remain competitive, and attract and retain highly-skilled physicians, researchers, and medical students without providing modern research laboratories; and

WHEREAS, the applicant further represents that the majority of highly-ranked academic medical centers in the United States have new research facilities or are planning new research facilities; and

WHEREAS, the applicant further represents that the research space of the CSM Building has been designed to be modern and competitive with other such facilities and to promote the desired research environment by creating opportunities for collaborations among different scientific disciplines; and

WHEREAS, to achieve this multi-disciplinary collaborative model with efficiency and adaptability, the laboratory floors require large uniform floor plates; and

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WHEREAS, the applicant cites spatial analyses reflecting that effective laboratory floor plates for institutions with similar missions to Mount Sinai's range from 28,000 sq. ft. to 36,000 sq. ft.; and

WHEREAS, the studies reflect that a certain sized floor plate is dictated by the optimum number of principal investigators ("P.I.'s") per floor, their space requirements and the additional space necessary for ancillary offices, equipment rooms and conference rooms required by multi-disciplinary teams of scientists; and

WHEREAS, the studies cited by the applicant also reflect that 1,500 net sq. ft. is the minimum area required for each lead scientist or P.I., and that 12 is the optimum number of P.I.'s to station on each floor; and

WHEREAS, the applicant represents that the proposed 28,000 sq. ft. floor plate model (not including mechanical space) is therefore the minimum required for the number of P.I.'s needed to conduct the Medical School's translational research programs; and

WHEREAS, the applicant represents that the waivers to height and setback, sky exposure plane, community facility tower coverage, and community facility lot coverage are necessary to achieve the desired floor plates for the CSM Building while also accommodating the Nurses' Residence and the required extensive mechanical system adjacent to the CSM Building at the base of the Residential Building; and

WHEREAS, representatives of Mount Sinai stated that the lower levels of the CSM Building are required for sensitive imaging equipment because there is the least likelihood of vibration or disturbance closest to the foundation and below grade; and

WHEREAS, because it serves Mount Sinai's programmatic needs to protect these uses and to locate them on below-grade levels of the CSM Building, the mechanical system which would otherwise be located below-grade must be located elsewhere; and

WHEREAS, representatives of Mount Sinai state that isolating the mechanical system from the CSM Building also serves other key programmatic and zoning objectives: (1) it diminishes the likelihood of vibrations which could disrupt sensitive equipment, experiments or samples; and (2) it limits the degree of non-compliance with height, setback, and sky exposure plane requirements that would otherwise be caused by the placement of 56,000 sq. ft. of mechanicals on the roof of the proposed CSM Building; and

WHEREAS, the applicant states that the height and setback waivers are also necessary to accommodate fifteen-foot floor-to-floor heights of the CSM Building necessary to provide sufficient space between floors for the extensive ductwork, plumbing and conduit required by the facility's mechanical and HVAC systems; and

WHEREAS, further, the applicant states that, after surveying the vicinity for potential sites, it determined that the proposed site was the most viable option to satisfy the programmatic needs, in part, because it is occupied by inefficient outmoded underperforming buildings, yet is strategically located within Mount Sinai's Campus; and

WHEREAS, by locating the CSM Building on the Zoning Lot, the applicant represents that Mount Sinai can maximize efficiency in the coordination of laboratory research, clinical research, and clinical care, by expediting the translation of scientific discoveries into clinical applications and then integrating the lessons learned from treatment outcomes into further laboratory research; and

WHEREAS, the central location of the CSM Building facilitates connectivity to Mount Sinai and doctors' offices on the main campus and to the clinics in the Center for Advanced Medicine for patients, visitors, faculty, staff, students, and support services; and

WHEREAS, the applicant represents that Mount Sinai identified the site for the CSM Building after a comprehensive review of available sites in the neighborhood surrounding Mount Sinai's campus, concentrating on sites owned by Mount Sinai between Fifth Avenue and Park Avenue from East 97th Street to East 102nd Street; and

WHEREAS, the applicant rejected other available sites due to their insufficient size, configuration, and location within lower density zoning districts, which would limit the permitted floor area and the size of the floor plates; and

WHEREAS, the applicant states that in addition to small size, certain sites within the campus were rejected because they have occupied residential units on them; and

WHEREAS, Mount Sinai identified the Zoning Lot as the most operationally feasible location for the CSM Building, because: (1) the existing buildings on the site, other than the Nurses' Residence, are old or built only for temporary use; (2) the existing uses within those buildings can be relocated elsewhere on the campus or within the CSM Building; and (3) the floor area permitted under the subject R9 zoning district regulations can accommodate the proposed building; and

WHEREAS, although the Zoning Lot was found to constitute the optimum site for the proposed project from an operational and a zoning standpoint, Mount Sinai represents that it is unable to accommodate its programmatic needs within a building or a site plan that complies with all relevant R9 zoning district regulations; and

WHEREAS, in its initial submission, the applicant considered an as-of-right alternative for the CSM Building, but determined that it would produce smaller floor plates on the first through fifth floors, and would set back in steps on floors six through 12, creating even smaller floor plates on the higher floors, and was therefore unable to accommodate the aforementioned programmatic needs; and

WHEREAS, the applicant represents that the resultant floor plates would range from 13,062 sq. ft. to 18,962 sq. ft. on the sixth through 12th floors of a complying building and that the second through fifth floors could support floor plates with areas of between 24,982 sq. ft. to 26,916 sq. ft.; and

WHEREAS, in an effort to accommodate the maximum-sized floor plate required for the laboratory space, those uses would be situated on the lower floors in the complying scenario, but such a design would be contrary to Mount Sinai's programmatic need to offer clinic space to

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patients on the more accessible lower floors; and

WHEREAS, during the course of the hearing, the Board directed the applicant to explore other as-of-right scenarios; and

WHEREAS, in response, the applicant provided an analysis of four alternative site plans: (1) a “No Residential Tower” option retaining the Nurses’ Residence, (2) a “Community Facility Tower” option with an L-shaped CSM Building comprised of eight laboratory floors at the base and a residential tower above; (3) a “Tiered CSM Building” with adjacent residential tower (as in the initial submission); and (4) a stacked CSM Building and residential tower oriented parallel to the avenues with demolition of the Nurses’ Residence; and

WHEREAS, the applicant explained that none of the four alternative scenarios provided floor plates with the same functionality as the proposed building, specifically: (1) the No Residential Tower scenario permits a larger floor plate, but its L-shape creates circulation inefficiencies, impairs patient accessibility, and does not achieve the translational research program goals facilitated by the rectangular design; (2) the Community Facility Tower scenario allows for only one sufficiently-sized laboratory floor and creates circulation inefficiencies; (3) the Tiered CSM Building results in insufficiently-sized non-uniform floor plates; and (4) the stacked CSM Building option eliminates the Nurses’ Residence and is therefore contrary to Mount Sinai’s programmatic need to retain that building; and

WHEREAS, the applicant concludes that the lot coverage, height, encroachment into the required setback and sky exposure plane are required to meet the programmatic and design imperatives of the CSM Building; and

WHEREAS, in analyzing the Applicant’s waiver requests, the Board notes at the outset that Mount Sinai, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986) (hereinafter, “Cornell”)); and

WHEREAS, the Board notes that Mount Sinai includes the Mount Sinai School of Medicine of New York University, a New York State chartered educational institution providing a significant educational program, which will operate the CSM Building; and

WHEREAS, the Board also notes that the CSM Building has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, accordingly, the Board finds it appropriate to give Mount Sinai’s programmatic needs

deference; and

WHEREAS, the Board observes this deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its initial submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of Mount Sinai; and

WHEREAS, specifically, as set forth above, the applicant represents that the CSM Building will provide Mount Sinai with six laboratory floors, which meet the minimum required floor area for modern translational research programs, and five floors for other Hospital uses, including a portion of the extensive mechanical system required by such use; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate Mount Sinai’s programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, further, while the site, at approximately 64,000 sq. ft., is large, the retention of the Nurses’ Residence and its location constrains any new development on the site; and

WHEREAS, the requirement to maintain distance between buildings as required by ZR § 23-70, additionally constrains the available footprint or lot coverage area, as well as necessitates the location of the CSM Building along Madison Avenue to maximize the length and depth its floor plates; and

WHEREAS, the Opposition argues that the applicant has failed to make the (a) finding because: (1) the site is not unique; (2) Mount Sinai is not entitled to deference as to its programmatic needs under the Court of Appeals decision in Cornell to satisfy the (a) finding; and (3) the retention of the Nurses’ Residence, which occupies nine percent of the Zoning Lot, is not a valid constraint; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant cannot satisfy the (a) finding under ZR § 72-21 because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Board finds that the applicant’s submissions, which include statements, plans, and other evidence, provide the required specificity about its program to establish that the requested variances are necessary to satisfy its programmatic needs, consistent with the Cornell decision; and

WHEREAS, the Board notes that the applicant made detailed submissions outlining the requirements for the laboratory space and that spatial analysis consultants testified at hearing as to these minimum parameters; and

WHEREAS, the Opposition argues that Mount Sinai is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because: (i) the proposed use is neither a hospital, nor a school; (ii) it is seeking a bulk variance, rather than a use variance; and (iii) the development of the Residential Building on the Zoning Lot militates against the public

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benefits presented by the proposed project; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the applicant states that Mount Sinai includes the Mount Sinai School of Medicine (the "Medical School") with an enrollment of 487 medical students, 152 Ph.D. students, 410 post-doctoral fellows; and

WHEREAS, the applicant further states that the employees at the CSM Building will include approximately 100 Medical School faculty, 100 graduate students, and 150 post-doctoral fellows; and

WHEREAS, the applicant represents that the outcomes of research conducted at the CSM Building will be "translated" into Mount Sinai's clinical care and medical education in furtherance of its mission, and that research facilities such as that proposed are customarily found on the campuses of medical schools; and

WHEREAS, New York Courts broadly construe educational uses to be those uses which are found on the campuses of educational institutions and are reasonably associated with an education purpose (see *N.Y. Botanic Gdn. v. Bd. of Stds. and Apps.*, 91 N.Y.2d 413 (1998) (radio tower on university campus qualified as an accessory educational use) and *Lawrence Sch. Corp. v. Lewis*, 174 A.D. 2d 42 (2d Dep't 1992) (proposed swimming pool on campus of day school was reasonably associated with its educational purpose)); and

WHEREAS, the Opposition also argues that the proposed project is entitled to no special deference because the applicant is seeking a bulk variance, rather than a use variance; however, as it has cited no legal support for the proposition that an application for a bulk variance for an educational use would be subject to a different standard of review by a zoning board than an application for a use variance by the self-same educational institution, or for its contention that an educational use would not be entitled to deference merely because it occupies the same zoning lot as a residential use, the Board therefore does not address either argument; and

WHEREAS, the Opposition further contends that the CSM Building is not entitled to the deference accorded an educational institution because it is in fact part of a single mixed-use development, and that there is no nexus between a residential building being developed on the Zoning Lot and the programmatic needs of Mount Sinai; and

WHEREAS, first, the Board notes that the required waivers all relate exclusively to the proposed Hospital community facility use; and

WHEREAS, the Board is reviewing the Zoning Lot in its entirety but notes that it is the inclusion of the mechanicals for the CSM Building (community facility use) in the base of the Residential Building that triggers the requested community facility lot coverage and community facility tower coverage waivers; and

WHEREAS, the Board further notes that it is not rendering a decision on the zoning compliance of the Residential Building, which will be reviewed by DOB; and

WHEREAS, the Board further notes that the DOB objections enumerated above apply only to the proposed community facility use and that no objections associated with residential use have been identified or are addressed by this decision; and

WHEREAS, additionally, the Board finds the characterization of the two buildings as either two distinct buildings or one merged building to be irrelevant, since its analysis comprised the entire Zoning Lot; and

WHEREAS, furthermore, in addition to its programmatic needs, the applicant states that the retention of the Nurses' Residence on the Zoning Lot constitutes a "unique physical condition" inherent in the Zoning Lot which constrains its development; and

WHEREAS, the applicant further states that the configuration of the CSM Building is shaped by the constraints caused by its need to preserve the Nurses' Residence as well as by the Medical School's program for the proposed building and; and

WHEREAS, the Board notes that drawings submitted by the applicant illustrating alternative as-of-right scenarios for the development of the CSM Building clearly demonstrate the impossibility of preserving the Nurses' Residence and also developing a research facility with floor plates of the desired configuration and square footage in any other portion of the Zoning Lot; and

WHEREAS, the Opposition has argued that retention of the Nurses' Residence is not a valid constraint; and

WHEREAS, the Board notes that that it has recognized that that the need to retain an existing building can validly constrain the ability of a major health care facility to develop the floor plates necessary to meet its programmatic needs (see *BSA Cal. No. 71-03-BZ*; applicant, Joan and Sanford I. Weill Medical College of Cornell University ("Cornell Medical")) and that, although the site is approximately 64,000 sq. ft. in size, the retention of the Nurses' Residence and its location constrains any new development on the site; and

WHEREAS, the applicant states, moreover, that the retention of the Nurses' Residence on the Zoning Lot is not the only physical constraint, but also that the need to provide sufficient light and air and the required distance between buildings limits the available footprint and lot coverage area, as well as necessitates the siting of the CSM Building along Madison Avenue to maximize its floor plate even in an as-of-right scenario; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see *Guggenheim Neighbors v. Bd. of Estimate*, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also *Jewish Recons. Syn. of No. Shore v. Roslyn Harbor*, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but

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must instead seek to accommodate the planned use; (see *Albany Prep. Charter Sch. v. City of Albany*, 31 A.D.3rd 870 (3rd Dep't 2006); *Trustees of Union Col. v. Schenectady City Cnl.*, 91 N.Y.2d 161 (1997)); and

WHEREAS, in sum, the Board has reviewed the submissions made by the Opposition, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the CSM Building; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations due to the programmatic needs of Mount Sinai and its unique physical conditions; and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since Mount Sinai is a non-profit institution and each of the required waivers are associated with its community facility use and are sought to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the Opposition argues that the Residential Building and the CSM Building should be treated as one mixed-use building because the two buildings will occupy the same Zoning Lot pursuant to a merger of Tax Lots 3, 5, and 59 and because the computations of bulk requirements for floor area, open space, community facility tower coverage and lot coverage are based on the area of the entire Zoning Lot; and

WHEREAS, consequently, the Opposition argues that preparation of a feasibility study is required, notwithstanding Mount Sinai's non-profit status, since a portion of the Zoning Lot will be occupied by a privately-owned residential building; and

WHEREAS, in support of its position that a financial feasibility study is required, the Opposition cites to Board decisions in BSA Cal. No. 194-03-BZ and BSA Cal. No. 72-05-BZ in which the Board evaluated the financial feasibility of projects proposed by not-for-profit organizations, and to two pending applications in which the Board directed applicants to prepare and submit feasibility studies; and

WHEREAS, in the cases cited by the Opposition, and in a number of other cases, not-for-profit applicants were required to perform financial feasibility studies because they sought variances to permit uses on their property which were unrelated to their overall purpose or mission (see BSA Cal. No. 74-07-BZ, applicant Congregation Shearith Israel; BSA Cal. No. 315-02-BZ, applicant Touro College; BSA Cal. No. 179-03-BZ, applicant Torah Studies, Inc.; BSA

Cal. No. 349-05-BZ, applicant Church of the Resurrection); and

WHEREAS, the Board is guided by New York State law which requires a not-for-profit organization seeking a variance for a revenue-generating use which is not based on its programmatic needs to make the variance findings before a Board may permit the use (see *Little Joseph Realty v. Babylon*, 41 N.Y.2d 738 (1977); *Foster v. Saylor*, 85 A.D.2d 876 (4th Dep't 1981); and *Roman Cath. Dioc. of Rockville Ctr v. Vill. Of Old Westbury*, 170 Misc.2d 314 (1996); and

WHEREAS, with respect to the instant application, however, the variances are sought exclusively for the development of a state-of-the-art translational research facility in furtherance of the programmatic needs and mission of Mount Sinai, and no variance request is before the Board concerning the private residential portions of the Residential Building (see *Cornell Medical*, BSA Cal. No. 71-03-BZ); and

WHEREAS, because Mount Sinai is not seeking a variance to permit a use which is unrelated to its program, it is therefore exempt from the requirement of ZR § 72-21 (b) to establish that the property for which the variance is sought could not otherwise achieve a reasonable financial return; and

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of community facility lot coverage, height, setbacks, sky exposure plane and community facility tower coverage will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the larger floor plates resulting from the requested variance are compatible with other large institutional and residential buildings on and surrounding Mount Sinai's campus, that the height of the CSM building is similar to that of the Guggenheim Pavilion immediately to its south, and that its Madison Avenue façade and massing is consistent with that of buildings located on adjacent blocks on Madison Avenue and Fifth Avenue; and

WHEREAS, the applicant provided drawings showing streetscapes of East 101st Street and East 102nd Street, from Fifth Avenue east to Lexington Avenue, and Madison Avenue, from East 98th Street north to R. Lonnie Williams Place (104th Street), which indicate that there is a neighborhood context for the height and bulk of the proposed CSM Building; and

WHEREAS, according to shadow studies performed by the applicant, the CSM Building would not substantially reduce the amount of sunlight on the three surrounding streets; although for brief periods during morning hours there could be less light on East 101st Street, as well as on East 102nd Street during afternoon hours, and on Madison Avenue during late afternoon and evening hours; and

WHEREAS, the applicant further represents that the CSM Building would not impact development or use of other property, in that the Zoning Lot comprises most of the block and the two remaining parcels are already fully built

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out for residential use; and

WHEREAS, further, any impacts on surrounding development would also be limited by the location of the subject site within Mount Sinai's campus which comprises a four block area from East 98th Street to East 102nd Street and from Madison Avenue to Fifth Avenue; and

WHEREAS, the Opposition argues that the variances "will directly result in development of [an] as-of-right 600-foot residential Tower" which is incompatible with the context of the surrounding neighborhood; and

WHEREAS, as noted above, approval of the proposed Residential Building is not before the Board; the scope of review pertinent to the (c) finding is limited to the impacts on the surrounding neighborhood of the variances sought to permit the CSM Building, which has not been discussed by the Opposition in its submissions; and

WHEREAS, since its initial submission, Mount Sinai has reduced the height of the CSM Building by ten feet, to approximately 187 feet above the average curb elevation by compacting mechanical space at the top floor of the CSM Building, and has reduced the height of the Residential Building as well, to 542 feet above the curb elevation; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the development of a state-of-the art translational research facility with: (i) floor plates of at least 28,000 sq. ft; (ii) a rectangular floor plate configuration; (iii) floor-to-floor heights that can accommodate mechanical and HVAC systems; and (iv) proximity to Mount Sinai's campus; and by the need to retain the Nurses' Residence and the consequential difficulty in accommodating those needs within an as-of-right development; and

WHEREAS, the Opposition contends that Mount Sinai created its hardship by its sale or intent to sell properties located at 1200 Fifth Avenue and 1212 Fifth Avenue which could otherwise be used to house staff residing in the Nurses' Residence; and

WHEREAS, in a submission to the Board, the applicant states that demolition of the twelve-story Nurses' Residence would be costly and that relocation of the occupants to other sites within the campus is neither financially nor operationally feasible; and

WHEREAS, the Opposition also argues that the applicant has created its hardship by its decision to develop a residential tower on the Zoning Lot which will use approximately half of the Zoning Lot floor area; and

WHEREAS, a submission by the applicant states that

Mount Sinai first determined the necessary size and layout of the CSM Building, taking into account the existing Nurses' Residence and the need for zoning variances, before identifying the possible location of a residential development; and

WHEREAS, the applicant further states that the configuration of the CSM Building is shaped entirely by Mount Sinai's program for the proposed building and by the constraints caused by its need to preserve the Nurses' Residence; and

WHEREAS, the Board notes that drawings submitted by the applicant illustrating alternative as-of-right scenarios for the development of the CSM Building clearly demonstrate the impossibility of preserving the Nurses' Residence and also developing a research facility with floor plates of the desired configuration and square footage in any other portion of the Zoning Lot; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by Mount Sinai or a predecessor in title; and

ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant further represents that Mount Sinai, through its consultants, has designed research space that is modern and competitive with other such facilities and which minimizes the degree of waivers sought by meeting certain thresholds for maximum efficiency; and

WHEREAS, the applicant states that the requested the waivers of community facility lot coverage, height, setback, sky exposure plane and community facility tower coverage represent the minimum variance necessary to allow Mount Sinai to meet its programmatic needs; and

WHEREAS, the Opposition argues that the (e) finding cannot be met because an as-of-right CSM Building could be built on the subject Zoning Lot; and

WHEREAS, as discussed above, the applicant explored four different as-of-right scenarios for the proposed project, and none provided floor plates with the same functionality of the proposed building; and

WHEREAS, the Board further notes that, to meet the setback, lot coverage and other limitations of the zoning district, while providing the floor area required for the facility, the height of each of the as-of-right building scenarios significantly exceeded the height of the proposed CSM Building; and

WHEREAS, since its initial submission, the applicant has reduced the height of the CSM Building by ten feet, to 187'-4" above the average curb elevation, by compacting mechanical space at the top floor of the CSM Building, and has similarly reduced the height of the Residential Building to 542 feet from 564 feet; and

WHEREAS, the Board finds that the requested waivers of community facility lot coverage, height, setbacks, sky exposure plane, and community facility tower coverage represent the minimum necessary to allow Mount Sinai to

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meet its programmatic needs; and

WHEREAS, the Opposition argues that the waivers could be reduced if the proposed laboratory uses were situated on the lower floors of the CSM Building, rather than the clinical services proposed for those floors; and

WHEREAS, the applicant has stated that clinical services must be located on the lower floors to be more accessible to patients seeking medical care; the Board finds that the applicant has established that siting laboratory uses on the lower floors is not viable and, further, would not reduce the requested variances; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.4(b) (6) (v) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA033M, dated August 2008; 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, the Board notes that although the Residential Building is not before it, that potential impacts from all contemplated development on the Zoning Lot must nonetheless be evaluated by CEQR and therefore potentially significant adverse impacts created by the Residential Building are discussed below; and

WHEREAS, the New York City Department of Transportation (“DOT”) reviewed the proposed project and identified a potential signal timing modification at Fifth Avenue and East 97th Street that could enhance traffic operations; and

WHEREAS, DOT has requested that the applicant provide it with six months of advance notice of the projected opening of the CSM Building so that the agency can timely evaluate the necessity of implementing the aforementioned signal timing modification when the project is completed; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a October 29, 2007 and revised August 2008 Environmental Assessment Statement; (2) a January 2007 Phase I Environmental Site Assessment which examine the proposed action for potential hazardous materials; and (3) a May 2008 Subsurface (Phase II) Investigation Report; and

WHEREAS, DEP also reviewed and approved a June 2008 Construction Health and Safety Plan (“CHASP”) and a June 2008 Remedial Action Plan (RAP) addressing environmental remediation of the subject site, and requested that the RAP be revised to incorporate certain comments and recommendations; and

WHEREAS, the Board notes that EAS, Subsurface Investigation Report, CHASP and RAP have been available for public review since June 2008; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation required by an August 2008 revised RAP, pursuant to a Restrictive Declaration executed and submitted to be recorded against the subject property on October 27, 2008; and

WHEREAS, after approval of the executed Restrictive Declaration, DEP will remit a Notice to Proceed to the Department of Buildings (“DOB”); and

WHEREAS, after implementation of the RAP, one or more Remedial Closure Report(s) certified by a professional engineer must be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential air quality impacts of the proposed action and initially determined that the PM 2.5 concentrations on the Residential Building from Mount Sinai’s existing central steam plant (“Central Steam Plant”) would be expected to exceed acceptable limits; and

WHEREAS, to reduce the potential for impacts from PM 2.5 emissions, the applicant has modified the project to (i) replace Central Steam Plant boilers that operate on high-emission No. 6 fuel oil with new dual-fuel low-emission boilers that operate with interruptible natural gas as a primary fuel source and No.2 fuel oil as a back-up fuel source, and which achieve a 15 percent increase in energy efficiency; (ii) increase the height of the Central Steam Plant exhaust stack by 30 feet; and (iii) restrict the location of the fresh air intakes for residential HVAC systems; and

WHEREAS, the applicant represents that the improvements to the Central Steam Plant are expected to be completed by 2011, the same year that the Residential Building is expected to be ready for occupancy; and

WHEREAS, a revised EAS concludes that the proposed improvement to the Central Steam Plant and the adoption of the proposed design measures would reduce the potential for impacts from PM 2.5 emissions to levels that would not be significant; and

WHEREAS, the Opposition contends, however, that the preparation of an environmental impact statement is required by SEQRA to determine whether the proposed mitigation measures are adequate, citing the Court of Appeals decision in *Merson v. McNally* (90 N.Y.2d 742 (1997)); and

WHEREAS, the applicant contends that the Opposition misapprehends the Court’s holding in *Merson*, and that the case instead supports the proposition that a lead agency may issue a negative declaration for a Type I action in which the proposed project is modified during the hearing process to negate the potential for significant adverse

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impacts; and

WHEREAS, the Board notes that the applicant in Merson made changes to its proposed project in response to comments from the lead agency, interested agencies and the public during the review process, before the lead agency issued its negative declaration, which contained no conditions; and

WHEREAS, the Court held that such a process was permissible under SEQRA and could result in a negative declaration, even for a Type 1 action; the Court further held that mitigating measures which “clearly negate the continued potentiality of the adverse effects of the proposed action” will obviate the need for an EIS (id. at 754); and

WHEREAS, the Opposition further argues that the Board may not improperly condition the issuance of a negative declaration for a Type 1 action on meeting certain mitigation measures; and

WHEREAS, the Court in Merson set forth a two-step test for determining whether a negative declaration has been improperly conditioned: (i) if the project as initially proposed might result in significant adverse impacts; and (ii) if the proposed mitigating measures incorporated into the [EAS] were ‘identified and required by the lead agency’ as a condition precedent to the issuance of the negative declaration’ (id. at 753); and;

WHEREAS, the Board notes that neither DEP, nor the Board itself, has identified and required mitigating measures as conditions precedent to the issuance of a negative declaration by the Board; instead, consistent with the standard set forth in Merson, the proposal was modified by the applicant to negate the potential air quality impacts identified by the environmental assessment, consequently allowing a determination of non-significance; and

WHEREAS, the Opposition also asserts that the EAS was deficient in its analysis of potential significant adverse impacts by failing to consider the potential frequency of backup oil use at the Central Steam Plant, or the impacts of air infiltration into occupied residential spaces when windows are closed; and

WHEREAS, a response by the applicant states that the EAS represents a conservative assessment of potential air quality impacts from the Central Steam Plant, as it was based on a review of 2006 -2007 fuel usage data, a period when fuel oil was used almost exclusively; and

WHEREAS, the applicant further states that the EAS considers all windows and fresh air intakes to be “receptors,” whether they are open or closed, therefore resulting in higher estimated concentrations of PM 2.5 and other pollutants at receptor locations than would actually be experienced; and

WHEREAS, the maximum hourly incremental traffic from the proposed project was determined to be less than the mobile source screening threshold of 100 peak hour trips set forth in the CEQR Technical Manual, and therefore the project is not expected to create significant adverse impacts from mobile source emissions; and

WHEREAS, the carbon monoxide contributions arising from the project’s parking garage were found to

result in no significant adverse mobile source air quality impacts; and

WHEREAS, a stationary source screening analysis for the heating, ventilation and air conditioning (HVAC) system performed for the proposed Residential Building determined that the project would not result in any significant adverse stationary source air quality impacts; and

WHEREAS, the Opposition also contends that Mount Sinai’s Annenberg building should have been considered for purposes of stationary source screening analysis; and

WHEREAS, the applicant states that, for the purposes of such screening analysis, the Annenberg building is not considered to be of similar or greater height as compared to the Residential Building, and was thus excluded from the screening analysis in accordance with the guidelines of the CEQR Technical Manual; and

WHEREAS, the Opposition also argues that construction of the proposed project would increase PM 2.5 concentrations and thereby create a significant adverse impact requiring an EIS review; and

WHEREAS, a response by the applicant states that the determination as to whether temporary air quality impacts during construction are considered significant depends on the duration and magnitude of the impacts and that the 34 to 42 month projected construction period for the proposed project and the projected levels of PM 2.5 emissions from mobile sources are both well below the thresholds for quantitative analysis and potential significant adverse impacts established by the CEQR Technical Manual and DEP’s interim guidance criteria, and

WHEREAS, the Board finds that the proposed action will not have a significant adverse impact on air quality; and

WHEREAS, a chemical spill analysis of the proposed laboratories determined that the maximum impacts would not exceed the short term exposure limits set by the federal Occupational Safety and Health Administration and the National Institute of Occupational Safety and health; therefore, that no significant adverse impacts due to fume hood emissions would be expected; and

WHEREAS, based on noise measurements performed on the four roadways bounding the block of the project site, the environmental assessment determined that a noise attenuation of 30 dBA would be required to achieve an interior noise level of 45 dBA or less in a closed window condition; and

WHEREAS, the applicant proposes to use windows with a minimum outdoor/indoor transmission class (“OITC”) rating of 30 dBA for all facades of the CSM Building and the Residential Building and to include centralized air conditioning as the alternate means of ventilation; and

WHEREAS, as discussed above, the EAS states that the CSM Building would cast shadows of relatively brief duration on East 101st Street, East 102nd Street, and on Madison Avenue; and

WHEREAS, the environmental assessment found that the Residential Building would cast a shadow on Central Park during the morning hours between March and

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September which would not cover any single area of the park for a significant amount of time, and would cast brief shadows over the Mae Grant Playground and the playground at P.S. 171 during certain times of the year; and

WHEREAS, no 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 Type I 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 R9 zoning district, partially within the Special Park Improvement District, the proposed construction of an eleven-story Center for Science and Medicine building, to be occupied for community facility use by The Mount Sinai Hospital and Mount Sinai School of Medicine of New York University, with mechanical facilities located in an adjacent building on the same Zoning Lot, that does not comply with zoning parameters for community facility lot coverage, height and setback, sky exposure plane, community facility tower coverage, contrary to ZR §§ 24-11, 24-522, and 24-54; *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 27, 2008"--Twenty-nine(29) sheets; and *on further condition*:

THAT the proposed building and subject Zoning Lot shall have the following parameters: (1) community facility lot coverage of 45,675 sq. ft.; (2) street wall height and total building height (including mechanicals) of approximately 187 feet from the curb level of East 101st Street and Madison Avenue and approximately 181 feet from the curb level of 102nd Street, without setbacks; and (3) community facility tower coverage of 45,625 sq. ft.; and

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

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

THAT mechanical space calculations shall be subject to DOB review and approval;

THAT all windows on the CSM Building and Residential Building facades shall have a minimum OITC (outdoor/indoor transmission class) rating of 30, as shown on the BSA-approved plans;

THAT ventilation air intakes at or above elevation 561'-0" shall be located only on the north façade of the Residential Building, facing north (away from the Central Steam Plant), as shown on the BSA-approved plans;

THAT the flume hood and vivarium exhaust fans for

the CSM laboratories shall be located on the roof of the Residential Building, as shown on the BSA-approved plans;

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT new interruptible dual-fuel boilers that use natural gas as a primary fuel source and No.2 fuel oil as a back-up fuel source, and which achieve an overall thermodynamic efficiency of at least 82 percent, as certified by an independent commissioning agent, shall be installed in the Central Steam Plant and that the stack height of the Central Steam Plant shall be increased to an elevation of 544 feet;

THAT issuance of a permanent certificate of occupancy shall be conditioned on a showing that either: (i) the aforementioned alterations have been made to the Central Steam Plant; or (ii) the boilers in the Central Steam Plant will operate only on interruptible natural gas until the aforementioned alterations are made to the Central Steam Plant; and

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT the Applicant shall provide six months of advance notice of the projected opening of the CSM Building to DOT;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

268-07-BZ

CEQR #08-BSA-036K

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48th Street, south side of 48th Street, between 16th and 17th Avenues, Block 5448, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 9, 2008, acting on Department of Buildings Application No. 310051467, reads, in pertinent part:

1. Proposed side yard is contrary to ZR 24-35;
2. Proposed rear yard is contrary to ZR 24-36;
3. Proposed community facility parking is contrary to ZR 25-31;
4. Proposed required setback for tall residential buildings is contrary to ZR 24-551;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, a three-story and cellar building to be occupied by a synagogue (Use Group 6) and accessory Rabbi’s residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, 24-551; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with continued hearings on September 16, 2008 and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application, subject to certain conditions; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, two adjacent property owners initially opposed the application but later withdrew their opposition to the proposed variance; and

WHEREAS, this application is being brought on behalf of Congregation Adath Jacob, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the south side of 48th Street between 16th Avenue and 17th Avenue within an R5 zoning district and has a lot area of approximately 4,007 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the proposal provides for the following uses: (1) a mikvah bath and multi-purpose room on the cellar level; (2) a synagogue on the first floor; and (3) an accessory Rabbi’s residence on the second floor and third floor; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 8,272 sq. ft. of community facility floor area; an FAR of 2.06 (2.0 FAR is the maximum permitted); a lot coverage of 76 percent (50 percent is the maximum permitted); a rear yard of 2’-0” (a 30’-0” rear yard is required above the first floor or 23’-0”); a staircase encroachment into the side yard, and a balcony encroachment into the front yard; and

WHEREAS, the proposal was revised during the hearing process; the current proposal provides for a synagogue building with approximately 7,259 sq. ft. of floor area, an FAR of 1.81, a lot coverage of 61 percent, a rear setback above the first floor of 12’-0” and a complying rear yard above the second floor,

and the elimination of the encroachments into the side yard and front yard; and

WHEREAS, additionally, the applicant proposes: two side yards, each with a width of 4’-0” (two side yards with minimum widths of 8’-0” each are required); a bulkhead encroachment into the side setback; and no accessory parking (12 accessory parking spaces are required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 110 families; and (2) to provide a residence for the Synagogue’s rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 1569 47th Street consists of approximately 31,600 sq. ft. of floor area on a zoning lot containing 10,000 sq. ft. of lot area, which is far in excess of its needs; and

WHEREAS, the applicant represents that the expense of maintaining its existing building has forced it rent out space to other users and it therefore seeks a synagogue building which can better accommodate the size of its congregation; 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, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi’s residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see *Jewish Recon. Syn. v. Vill. of Roslyn*, 38 N.Y.2d 283 (1975)); and

WHEREAS, the subject site has a width of 40’-0”; and

WHEREAS, the applicant states that the variances to lot coverage, rear yard, side yard and side yard setback would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, at hearing, the Board asked the applicant to demonstrate the necessity for the side yard waivers; and

WHEREAS, the applicant submitted plans indicating the occupancy of the synagogue and demonstrating the inability to accommodate the congregation within a complying structure; 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-

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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 states that that the proposed use and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the with the scale of the two-and-a-half-story homes that characterize the area; and

WHEREAS, the applicant submitted photographs of nearby homes which were compatible with the scale and bulk of the proposed Synagogue; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant provide a complying rear yard above the second floor by shifting the bulk of the building to its front; and

WHEREAS, in response, the applicant re-designed the building to provide a 12'-0" rear setback above the second floor and a complying rear yard above the second floor; and

WHEREAS, at hearing the Board also questioned the necessity for the proposed encroachments of a staircase into the side yard and of a balcony into the front yard; and

WHEREAS, the applicant submitted revised plans showing the relocation of the staircase to the rear of the structure and eliminating the balcony; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that 95 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, in response to concerns by the Board regarding egress, the applicant redesigned the building to include an exterior staircase at the rear of the second and third floors; and

WHEREAS, additionally, the applicant agreed to include the following changes to the proposal: (1) the addition of an interior garbage storage area; and (2) the addition of translucent privacy windows; 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, as noted, during the hearing process the applicant revised the proposal to provide a 12'-0" rear setback above the first floor and a complying rear yard above the second floor, thereby reducing the overall floor area by 755 sq. ft. and providing additional light and air to adjacent homes; and

WHEREAS, the applicant also eliminated proposed encroachments into the side yard and front yard; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 08BSA036K, dated March 18, 2008; 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 R5 zoning district, a three-story and cellar building to be occupied by a synagogue and accessory Rabbi's residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 22, 2008"—Eight (8) sheets; and *on further condition*:

THAT the building parameters shall be: floor area of

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7,259 sq. ft. an FAR of 1.81; a lot coverage of 61 percent; a rear yard at the first floor of 2'-0", a rear setback above the first floor of 12'-0"; a complying rear yard above the second floor; two side yards of 4'-0"; an encroachment into the side setback; and no accessory parking;

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

THAT the use shall be limited to a house of worship (U.G. 6) and Rabbi's residence;

THAT no commercial catering shall take place onsite;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT landscaping shall comply with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

35-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Isaac Ades, owner.

SUBJECT – Application February 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§34-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1856 East 24th Street, west side of 24th Street between Avenue R & Avenue S, Block 6829, Lot 29, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 11, 2008, acting on Department of Buildings Application No. 310078206, reads in pertinent part:

“1. Proposed plans are contrary to Z.R. 23-141(a)

in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.

2. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed Open Space is less than the required 65%.
3. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed lot coverage exceeds the maximum 35%.
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0".
5. Plans are contrary to Z.R. 23-461(a) in that the existing total side yards are less than the required 13'-0".
6. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0";” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, 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 July 1, 2008, after due notice by publication in *The City Record*, with continued hearings on July 29, 2008, September 8, 2008 and October 7, 2008, and then to decision on October 28, 2008; and

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

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

WHEREAS, members of the Madison-Marine-Homecrest Civic Association provided testimony in opposition to the proposal; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue R and Avenue S; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with floor area of approximately 1,869 sq. ft. (0.64 FAR); and

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

WHEREAS, the applicant seeks an increase in floor area from approximately 1,869 sq. ft. (0.64 FAR) to 3,206 sq. ft. (1.07 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides approximately 53 percent of open space (a minimum of 65 percent is required) and 47 percent of lot coverage (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 3'-0" (a minimum width of 5'-0" is required) and the non-complying total side yard width of 9'-10" (a total minimum width of 13'-0" is required); and

WHEREAS, the proposed enlargement provides a rear

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yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the applicant initially sought an increase in the floor area from approximately 1,869 sq. ft. (0.64 FAR) to approximately 3,432 sq. ft. (1.15 FAR); and

WHEREAS, the Board requested the applicant to establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted property information and photographs for a sampling of 11 homes within a three block radius of the subject site with floor areas comparable to that of the proposed home; one home was within 300 feet of the subject site and the rest were more distant; and

WHEREAS, because few homes with comparable floor area were identified relative to the size of the study area, and only one was near the subject site, the Board did not find this evidence compelling; and

WHEREAS, in response, the applicant revised its proposal to reduce the requested floor area to 3,206 sq. ft. (1.07 FAR); 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, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, 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 June 4, 2008" – (2) sheets, "September 3, 2008" – (4) sheets and "October 2, 2008" – (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,206 sq. ft. (1.07 FAR, including attic bonus); an open space of approximately 53 percent; lot coverage of 47 percent; two side yards with a combined total width of 9'-10", one side yard with a width of 3'-0" along the northern lot line and one side yard with a width

of 6'-10" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the perimeter wall height and compliance with the sky exposure plane;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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, October 28, 2008.

59-08-BZ

CEQR #08-BSA-068R

APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.

SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.

PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 6, 2008, acting on Department of Buildings Application No. 510023680, reads in pertinent part:

"A-1 application is filed to change building use to physical culture establishment. The use is subject to review & approval by Board of Standards & Appeals. ZR 73-36, 32-10."; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C2-1 (R3X) zoning

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district, the legalization of a physical culture establishment (PCE) in a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with continued hearings on August 26, 2008 and September 23, 2008, and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the PCE enter into a contract with another business or property owner to utilize their parking facility; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with parking, site maintenance, and noise; and

WHEREAS, the subject site is located on the north side of Forest Avenue, between Pelton Avenue and Regan Avenue; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 11,424 sq. ft.; and

WHEREAS, the PCE occupies the entire building and is operated as "Planet Fitness"; and

WHEREAS, the applicant represents that the PCE will provide facilities for group training, body building, weight reduction, and aerobics; 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, at hearing, neighborhood residents testified as to a lack of parking for PCE patrons; and

WHEREAS, the applicant represents that the parking requirements under the current Zoning Resolution are not applicable because the subject building was constructed without parking accommodations pursuant to the 1916 Zoning Resolution; and

WHEREAS, the applicant further represents that the permitted use for the building, according to its certificate of occupancy, is for office use and that pursuant to ZR § 36-21, the parking requirements for a PCE are the same as the parking requirements for office use; and

WHEREAS, a parking study submitted by the applicant indicates that an as-of-right commercial use could potentially generate parking demand similar or greater than that of a PCE; and

WHEREAS, the applicant submitted an affidavit from the manager of the PCE, stating that the managers and/or owners of five businesses with parking facilities near the subject building were approached regarding the possibility of renting parking spaces for PCE patrons and that none of these businesses were willing to rent any parking spaces; and

WHEREAS the applicant further states that there are

no licensed public parking lots or garages in the project vicinity; and

WHEREAS, the applicant represents, however, that the number of parking spaces in the surrounding area is adequate to serve the patrons of the facility; and

WHEREAS, the applicant provided an analysis of available parking within a 400-foot radius of the subject building indicating that metered spaces permitting up to two hours' parking are located along Forest Avenue and metered as well as unmetered parking spaces are available on most side streets; and

WHEREAS, the analysis further indicates that, during a peak period of operation, 19 of the 68 metered spaces (28 percent) and 33 of the 133 unmetered spaces (24 percent) within 400 feet of the subject building were available to serve an estimated 50 patrons; and

WHEREAS, the current hours of operation are: Monday through Thursday, 24 hours daily; Friday from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents complained about the noise generated by the PCE during evening hours; and

WHEREAS, the Board directed the applicant to reduce the hours of operation of the PCE to: Monday through Friday from 5:00 a.m. to 12:00 a.m.; and on Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents also complained about debris outside the building; and

WHEREAS, in response, the Board directed the applicant to store refuse inside the building until the day of pick-up; 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, the PCE will not interfere with any pending public improvement project; 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, 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 Board notes that the PCE has operated at the site since approximately February 14, 2008; and

WHEREAS, accordingly, the Board will reduce the term of the special permit for the period of time between February 14, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 08BSA068R dated June 27,

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2008; 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 in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment in a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 27, 2008"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 14, 2018;

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

THAT the hours of operation of the PCE shall be limited to: Monday through Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT the PCE shall store its refuse within the building until the time of pick-up;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals,

October 28, 2008.

79-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Giuseppe Porretto, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) for the construction of a single family residence on a vacant lot. This application seeks to vary (§23-32) for undersized lot width and lot area; (§23-461) for less than the required side yards and (§21-15) for a proposed lot line building which is not allowed in an R3-2 zoning district.

PREMISES AFFECTED – 117-23 132nd Street, easterly side of 132nd Street, 220; southerly of Foch Boulevard, Block 11696, Lot 55, Borough of Queens.

COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the Queens Deputy Borough Commissioner, on March 20, 2008, acting on Department of Buildings Application No. 402168845, denied reconsideration as follows:

1. proposed lot area and lot width for single family detached residence in R3-2 district is contrary to ZR 23-32;
2. proposed side yards for single family detached residence in R3-2 district is contrary to ZR 23-461;
3. proposed zero lot line building in R3-2 district is contrary to ZR 21-15;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3-2 zoning district, the proposed construction of a two-story with attic single-family home that does not provide the required lot area, lot width, and side yards, and which is built to the lot line, contrary to ZR §§ 23-32, 23-461 and 21-15; and

WHEREAS, a public hearing was held on this application on August 19, 2008 after due notice by publication in *The City Record*, with a continued hearing on September 23, 2008, and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 10, Queens, recommends disapproval of this application, citing concerns with the proposal's impact on neighborhood character; and

WHEREAS, the site is located on the east side of 132nd Street, between 117th Road and Foch Boulevard, in an R3-2 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of approximately 100 feet, and a total lot area of approximately

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2,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,199 sq. ft. of floor area (0.6 FAR, permitted under the attic rule), lot coverage of 30 percent, a wall height of 20'-6", a total height of 24'-0", a front yard of 18'-0", and a rear yard of 46'-9", and will provide the required accessory parking; and

WHEREAS, however, the applicant proposes to provide a single side yard with a width of 3'-0" (two side yards with minimum widths of 5'-0" and 8'-0", respectively are required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, a title report submitted by the applicant reflects that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the Board notes that ZR § 23-32 would eliminate a lot area and width requirement for a single-family dwelling, but not the side yard and lot line objections; and

WHEREAS, the applicant states that side yard 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 narrowness of the subject site; and

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

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the building would have an exterior width of only 7'-0" if side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the side yard and lot line waivers are necessary to create a home of a reasonable width; and

WHEREAS, the Board notes that a radius diagram indicates that the subject site is the only vacant lot within a 400-foot radius of the site and that other similarly sized lots are occupied with existing homes; and

WHEREAS, the applicant represents that 57 lots within a 400-foot radius of the subject site have widths of 20'-0", and that none comply with the side yard requirements; 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, the applicant submitted a streetscape showing that the height and bulk of the proposed home is consistent with that of the adjoining homes; and

WHEREAS, further, the applicant represents that there is a context in the surrounding area for homes on small lots lot that are built to the lot line with side yards with widths of less than 4'0"; and

WHEREAS, the applicant states that 44 of the 57 homes within a 400-foot radius of the subject site with lot widths of 20'-0" are built to a side lot line and have one side yard of 3'-0" or less; and

WHEREAS, the applicant further represents that the remaining 13 homes with widths of 20'-0" have combined side yard widths of less than four feet; and

WHEREAS, the applicant modified the proposal during the hearing process to shift floor area from the first floor to the second floor, thereby increasing the depth of the rear yard to 46'-9" from the 42'-0" initially proposed; 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, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; and

WHEREAS, the Community Board contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variances to build a habitable home; and

WHEREAS, as noted above, the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); 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 the R3-2 zoning district regulations for use, floor area, height, and parking; and

WHEREAS, the applicant modified the proposal during the hearing process to increase the depth of the rear yard to 46'-9"; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R3-2 zoning district, a two-story with attic single-family home that does not provide the required lot area, lot width, and side yards, and which is built to the lot line, contrary to ZR §§ 23-32, 23-461 and 21-15; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 9, 2008"–(8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,199 sq. ft. of floor area (0.6 FAR), lot coverage of 30 percent, a rear yard of 46'-9", and one side yard of 3'-0" on the southern lot line, 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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

84-08-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; L & M Service Station, lessee.

SUBJECT – Application April 9, 2008 – Special Permit (§§11-411, 11-412 & 73-01 (d)) to reinstate and amend the variance granted under Cal. No. 410-48-BZ for an automotive service station with accessory uses located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 67-24 Main Street, a/k/a 68-12 Main Street, West side Street 315.5' north of 68th Drive, Block 6486, Lot 38, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated April 7, 2008, acting on Department of Buildings Application No. 410061846, reads in pertinent part:

"Proposal to extend the term of the zoning variance which expired on June 10, 1968 is contrary to the latest resolution adopted by the Board of Standards and Appeals under Cal. No. 410-48-BZ and contrary to C.O. # 124955 which also expired on June 10, 1968 and must, therefore, be referred back to the BSA for reinstatement of the variance since the variance granted under Cal. No. 410-48-BZ has lapsed;" and

WHEREAS, in addition, the decision of the Queens Borough Commissioner, dated July 24, 2008, also acting on Department of Buildings Application No. 410061846, reads in pertinent part:

"Proposal to legalize the increase in floor area of the service building, legalize the 40' and 42' curb cuts on Main Street and the conversion of a storage area to an accessory convenience store is contrary to Section 33-26 Z.R. and contrary to the latest resolution and drawing adopted by the Board of Standards and Appeals under Cal. # 410-48-BZ and must be referred back to the board to become an amendment under Cal. # 84-08-BZ which is currently pending;" and

WHEREAS, this is an application for a special permit pursuant to ZR § 11-411, to reinstate a prior variance which allowed the operation of a gasoline service station with accessory uses (Use Group 16) in a C1-2 (R4) zoning district, and to permit, pursuant to ZR § 11-412, the legalization of modifications to the site contrary to ZR § 33-26; and

WHEREAS, a public hearing was held on this application on July 22, 2008 after due notice by publication in the *City Record*, with continued hearings on August 26, 2008, and September 23, 2008, and then to decision on October 28, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

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

WHEREAS, the premises is located on the west side of Main Street, 315 feet north of 68th Drive, in a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 26, 1948 when, under BSA Cal. No. 410-48-BZ, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses; and

WHEREAS, on June 26, 1958, under BSA Cal. No. 410-48-BZ, the Board granted an extension of term for a gasoline service station with accessory uses for a term of ten years, expiring on June 10, 1968; and

WHEREAS, the term of the variance has not been

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extended since its expiration on June 10, 1968, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station has been continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and seeks a special permit pursuant to ZR § 73-01(d); and

WHEREAS, the applicant has requested a ten-year extension of term; and

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

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that do not conform with previously approved plans, to reflect: (i) a 927 sq. ft. increase in floor area of the service building, (ii) the enlargement of the two curb cuts located on Main Street, and (iii) the conversion of the previously approved storage area to an accessory convenience store; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, the Board questioned whether the proposed convenience store complies with Technical Policy and Procedure Notice (TPPN) # 10/99, which provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building, and (ii) the accessory convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located on the same zoning lot as the gasoline service station, is contained completely within the enclosed building, and has a selling space of approximately 450 square feet, which is approximately four percent of the lot area; and

WHEREAS, thus, the proposed convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, at hearing, the Board questioned whether the service station identification sign could be relocated so as not to interfere with parking and circulation at the site; and

WHEREAS, in response, the applicant submitted photographs establishing that other potential locations would not be visible to motorists traveling north along Main Street; and

WHEREAS, at hearing, the Board also raised concerns about the condition of the fences and landscaping surrounding the site; and

WHEREAS, in response, the applicant agreed to make fencing repairs and submitted photographs establishing that the site had been cleaned and new shrubbery had been planted; and

WHEREAS, the board notes that the modifications to the site 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, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411, 11-412, and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 11-411 and 11-412, for a reinstatement of a prior Board approval, an extension of term, and a legalization of changes in the site plan of a gasoline service station (Use Group 16) with accessory automotive uses in a C1-2 (R4) zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received July 18, 2008”– (2) sheets and “August 11, 2008”– (1) sheet; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on October 28, 2018;

THAT the lot shall be kept free of graffiti, dirt and debris;

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

THAT a new certificate of occupancy be obtained by April 28, 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;

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

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

179-08-BZ

CEQR #09-BSA-004M

APPLICANT – Rizzo Group, for 600 Broadway Partners, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application July 22, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the fourth, fifth, and sixth floors in a six-story building. The proposal is contrary to ZR §42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 7, 2008, acting on Department of Buildings Application No. 110129904, reads in pertinent part:

“Section 42-14. The proposed physical culture establishment is not permitted as-of-right in the M1-5B district and is contrary to the ZR;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment (PCE) on the fourth, fifth, and sixth floors of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008 and then to decision on October 28, 2008; and

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

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

WHEREAS, the subject site occupies a through lot located on the east side of Broadway and the west side of Crosby Street between Houston Street and Prince Street; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the PCE will occupy a total of approximately 23,843 sq. ft. of floor area on the fourth, fifth, and sixth floors; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the site is located within the SoHo-Cast Iron Historic District and the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, issued February 28, 2008; and

WHEREAS, the PCE will operate 24 hours per day; 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 617.2; 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. 09BSA004M, dated August 14, 2008; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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 an M1-5B zoning district, the establishment of a physical culture establishment on the fourth, fifth, and sixth floors of a six-story commercial building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 23, 2008”–(3) sheets and “Received August 21, 2008”–(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 28, 2018;

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

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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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

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

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

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

Adopted by the Board of Standards and Appeals, October 28, 2008.

208-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt and 2123 Avenue M, LLC, owner.

SUBJECT – Application August 11, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141) and less than the minimum side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22nd Street, Block 7639, Lot 1 & 3 (tent 1), 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 23, 2008, acting on Department of Buildings Application No. 310165335, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard, straight line extension, is less than the 20’-0” minimum side yard permitted;”

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, open space ratio, and side yard, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on September 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 7, 2008 and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection at Avenue M and East 22nd Street; and

WHEREAS, the subject site has a total lot area of 5,500 sq. ft., and is occupied by a single-family home with floor area of approximately 3,556 sq. ft. (0.65 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 approximately 3,556 sq. ft. (0.65 FAR), to approximately 5,524 sq. ft. (1.00 FAR); the maximum floor area permitted is 2,750 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 54 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain an existing non-complying side yard with a width of 11’-0” (a minimum width of 20’-0” is required), and a complying side yard with a width of 5’-0”;

WHEREAS, at hearing, the Board questioned the compliance of the proposed attic floor area with zoning requirements; and

WHEREAS, the applicant submitted revised plans showing compliance with the required sky exposure plane; 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

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the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, and side yard, contrary to ZR §§ 23-141 and 23-461; *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 September 29, 2008"–(11) sheets and "October 14, 2008"–(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 5,524 sq. ft. (1.00 FAR), a minimum open space ratio of 54 percent, and side yards with minimum widths of 11'-0" and 5'-0", respectively, as illustrated on the BSA-approved plans;

THAT DOB shall review the proposed landscaping for compliance with ZR § 23-451;

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, October 28, 2008.

119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39th Street, northern side of 39th Street, midblock between 4th Avenue and 5th Avenue, Block 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

171-07-BZ

APPLICANT – Sheldon Lobel, P.C., for The Michael J. Tropp 2002 Revocable Trust, owners.

SUBJECT – Application June 18, 2007 – Special Permit (§73-622) to allow the Legalization of an enlargement to a single family residence which exceeds the allowable floor area, lot coverage and less than the minimum open space (§23-141); less than the minimum required rear yard (§23-47) less than the minimum side yards (§23-461) in an R3-1 zoning district. Previous BSA Special Permit (§73-622) 173-99-BZ was dismissed for lack of prosecution on September 24, 2002.

PREMISES AFFECTED – 167 Norfolk Street, located on east of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Yellin and Susan Klapper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 18, 2008, at 1:30 P.M., for decision, hearing closed.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: S. Grecke.

ACTION OF THE BOARD – Laid over to December 16, 2008, at 1:30 P.M., for continued hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot

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coverage, open space 923-141(b)) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

51-08-BZ

CEQR #08-BSA-065K

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 16, 2008, at 1:30 P.M., for deferred decision.

76-08-BZ

APPLICANT – Eric Palatnik, P.C., for Hatzolah of Far Rockaway, owner.

SUBJECT – Application April 12, 2008 – Variance (§72-21) to permit the legalization of the rear yard for the existing Use Group 4 not-for-profit ambulance/emergency garage, dispatch and training facility. The proposal is contrary to ZR §24-36. R5 district.

PREMISES AFFECTED – 621 Beach 9th Street, south of Caffney Avenue, Block 1558, Lot 15, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik

ACTION OF THE BOARD – Laid over to November 18, 2008, at 1:30 P.M., for deferred decision.

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria

Boulevard, southwest of the intersection of 112th Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

135-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 71-52 172nd Street, northwest corner of the intersection of 73rd Avenue and 172nd Street, Block 6959, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

157-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Waterfront Owners, LLC, owners.

SUBJECT – Application June 5, 2008 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.

PREMISES AFFECTED – 365 Bay Street, east side of Bay Street between Grant Street and St. Julian Place, Block 488, Lot 71, Borough of Staten Island.

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COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Off-Calendar without date.

159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 18, 2008, at 1:30 P.M., for continued hearing.

170-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69th Street, block bounded by East 69th and East 70th Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary T. Tarnoff, Samuel Lindenbaum, Todd Schiemann, Lois Mate, Erik Talley.

For Opposition: Jeffrey Chester, Roberta Ashkin, William Spitz, Marcus Kline, George Robmari and Genno R. O.

ACTION OF THE BOARD – Laid over to December 9, 2008, at 1:30 P.M., for continued hearing.

178-08-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.

SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot

35, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Serge Tishaev.

For Opposition: Leslie Flug and Susan Klapper.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

195-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.

SUBJECT – Application July 16, 2008 – 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 required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1350 East 27th Street, west side of East 27th Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Edith Lindbergh.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

196-08-BZ

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.

PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Joanna Stoica, James Heineman and Gary Spindler.

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for continued hearing.

203-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.

SUBJECT – Application August 1, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-

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141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1245 East 23rd Street, located on the east side of East 23rd Street between Avenue L and Avenue M. Block 7641, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 25, 2008, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:00 P.M.