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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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## DIRECTORY

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# DOCKET

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New Case Filed Up to July 29, 2008

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**197-08-BZ**

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**198-08-BZ**

268 Park Avenue South, West side of Park Avenue South at East 21st Street., Block 850, Lot(s) 39, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow the legalization of a physical culture establishment.

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**199-08-BZ**

400 East Fordam Road, Intersection of Webster Avenue and East Fordham Road, Block 3033, Lot(s) 12, Borough of **Bronx, Community Board: 6**. Special Permit (73-00) in pursuant of (73-36) to allow the operation of a physical culture establishment.

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**200-08-A**

171 Bayside Drive, South side of Bayside Drive., Block 16340, Lot(s) 50, 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.

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

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# CALENDAR

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**SEPTEMBER 9, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 9, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**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**

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**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**

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**APPEALS CALENDAR**

**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**

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**SEPTEMBER 9, 2008, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 9, 2008, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**11-07-BZ**

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§ 72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§ 22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41<sup>st</sup> Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**158-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Kay Robyn Askenazi and Shay Ashkenazi, owners.

SUBJECT – Application June 6, 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); less than the minimum side yards (23-461) and less than the minimum rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 1814 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue R and Avenue S, Block 6832, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**179-08-BZ**

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 Section 42-10. M1-5 district.

PREMISES AFFECTED – 600 Broadway, southeast corner of Houston Street, Block 511, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 29, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**728-29-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Exxon Mobil Franchisee, lessee.

SUBJECT – Application June 27, 2008 – Extension of Time to obtain a Certificate of Occupancy and Waiver of the rules for a UG16 Gasoline Service Station (Mobil), in an R-4 zoning district, which expired on May 15, 2003.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, Block 6744, Lot 71, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Patrick C. Gorman.

**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 amendment seeking an extension of time to obtain a certificate of occupancy, which expired on March 25, 2003; and

WHEREAS, a public hearing was held on this application on July 22 2008 after due notice by publication in *The City Record*, and then to decision on July 29, 2008; and

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

WHEREAS, the site is located on the south side of the Horace Harding Expressway at the corner formed by the Horace Harding Expressway and Kissena Boulevard, in an R4 zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance to permit the construction and operation of a gasoline station on the site; and

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

WHEREAS, the grant was most recently extended on May 15, 2001, for a period of ten years, to expire on March 19, 2010, with a condition that a certificate of occupancy be obtained by May 25, 2003; and

WHEREAS, the applicant represents that a construction permit application was filed under DOB Application No. 401196969, but work was not completed; and

WHEREAS, the applicant has filed plans pursuant to DOB Application No. 410058663, which will replace DOB Application No. 401196969; and

WHEREAS, at hearing, the Board requested that the applicant revise the plans to indicate that site lighting will be directed away from adjacent properties; and

WHEREAS, in response, the applicant submitted revised plans indicating that all lighting shall be directed downwards and away from neighboring properties; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 15, 1958, so that as amended this portion of the resolution shall read: “to permit a six-month extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; *on condition* that all use and operations shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 27, 2008”-(3) sheets and “July 22, 2008”-(2)sheets; and *on further condition*

THAT a certificate of occupancy shall be obtained by January 29, 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. (DOB Application No. 410058663)

Adopted by the Board of Standards and Appeals July 29, 2008.

**713-55-BZ**

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a gasoline service station (Mobil), in a C2-2/R3-2 zoning district, which expired on May 22, 2003.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side blockfront between Utopia Parkway and 182<sup>nd</sup> Street, Block 7065, Lot 8, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Patrick C. Gorman.

# MINUTES

**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 and an extension of time to obtain a certificate of occupancy, which expired on May 21, 2003; and

WHEREAS, a public hearing was held on this application on July 1, 2008 after due notice by publication in *The City Record*, with a continued hearing on July 22, 2008, and then to decision on July 29, 2008; and

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

WHEREAS, the site is located on the north side of the Horace Harding Expressway between Utopia Parkway and 182<sup>nd</sup> Street, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956, when, under the subject calendar number, the Board granted a variance to permit the occupation of the premises by a gasoline station and accessory uses; and

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

WHEREAS, the grant was most recently extended on May 21, 2002, for a period of ten years, to expire on December 11, 2011, with a condition that a certificate of occupancy be obtained by May 21, 2003; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy in part because a landscaped area had been paved over contrary to the BSA-approved plans; and

WHEREAS, on January 31, 2005, at the applicant's request, the Board issued a letter to the Department of Buildings, stating no objection to the paved area; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 11, 1956, so that as amended this portion of the resolution shall read: "to permit a six-month extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 29, 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."

(NB No. 3323)

Adopted by the Board of Standards and Appeals July 29, 2008.

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## 709-55-BZIII

**APPLICANT** – Walter T. Gorman, P.E., for L M T Realty Company, owner; Exxon Mobil Corporation, lessee.

**SUBJECT** – Application May 27, 2008 – Extension of Time to obtain a Certificate of Occupancy, in a C1-2/R4 zoning district, for a gasoline service station (Mobil) which expired on January 9, 2003; waiver of the rules and an Amendment to legalize existing condition contrary to previous approved plans.

**PREMISES AFFECTED** – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

**APPEARANCES** –

For Applicant: Patrick Gorman.

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

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## 788-89-BZ

**APPLICANT** – Dominick Salvati & Son Architects, for Anna Mastromihalis, owner.

**SUBJECT** – Application June 25, 2007 – Extension of Term/waiver for a UG16 automobile repair shop and automobile sales which expired on November 19, 2006 and Extension of Time to obtain a Certificate of Occupancy which expired on November 18, 1998 in a C2-2 zoning district.

**PREMISES AFFECTED** – 187-17 Jamaica Avenue, northeast corner of intersection of Jamaica Avenue and 187<sup>th</sup> Place, Block 9910, Lot 11, Borough of Queens.

## COMMUNITY BOARD #12Q

**APPEARANCES** –

For Applicant: Mark McArthy.

**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 September 9, 2008, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 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: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 10 A.M., for continued hearing.

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## 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 –

For Applicant:

**ACTION OF THE BOARD** – Laid over to August 19, 2008, at 10 A.M., for postponed hearing.

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## APPEALS CALENDAR

### 48-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Kathleen Brunton, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to GCL Section 36 and partially located within the bed of a mapped street contrary to GCL Section 35. R4 Zoning District.

PREMISES AFFECTED – 126 Oceanside Avenue, north side Oceanside Avenue, 220.50' east of Beach 207<sup>th</sup> Street, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

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

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 February 11, 2008, acting on Department of Buildings Application No. 410013694 reads, in pertinent part:

“A1- The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;

A2- the site and building is not fronting on an official mapped street, therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space and is contrary to Section 27-291 of the Administrative Code;” and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in the *City Record*, with continued hearings on July 1, 2008 and July 29, 2008 and then to closure and decision on this same date; and

WHEREAS, by letters dated June 2, 2008 and June 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 28, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections ; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated February 11, 2008, acting on Department of Buildings Application No. 410013694 is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 4, 2008”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; that all other applicable laws, rules, and regulations shall be complied with and; *on further condition*:

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

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

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## 49-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee.  
SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side Newport Walk, 110/19’ south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

## COMMUNITY BOARD #14Q

### APPEARANCES –

For Applicant: Loretta Papa.

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

### 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 February 12, 2008, acting on Department of Buildings Application No. 410013685 reads, in pertinent part:

“A1- The proposed enlargement is on a site located partially in the bed of a mapped street, therefore no permit or Certificate of Occupancy can be issued as per Article 3 Section 35 of the General City Law;

A2- the site and building is not fronting on an official mapped street therefore; no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space and is contrary to Section 27-291 of the Administrative Code”; and

WHEREAS, a public hearing was held on this application on June 3, 2008, after due notice by publication in the *City Record*, with continued hearings on July 1, 2008 and July 29, 2008 then to closure and decision on this same date; and

WHEREAS, by letters dated June 2, 2008 and June 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 28, 2008, the

Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 24, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner dated February 12, 2008, acting on Department of Buildings Application No. 410013685, is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 4, 2008 ”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with and; *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## 104-08-BZY thru 119-08-BZY

APPLICANT – Anthony J. Tucci, for Carmel Homes LLC, owner.

SUBJECT – Application April 23, 2008 – Extension of time (§11-332) to complete construction and obtain a Certificate of Occupancy under the prior district regulations. R3X zoning district Series cases 104-08-BZY thru 119-08-BZY  
PREMISES AFFECTED – 14/589 Carmela Court, Mill Road, Block 4690, Lots 129, 128, 127, 126, 120, 121, 122, 123, 124, 125, 110, 111, 112, 113, 114, 115, Borough of Staten Island.

## COMMUNITY BOARD #3SI

### APPEARANCES –

For Applicant: Anthony Tucci.

**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 under ZR § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, a minor

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development currently under construction at the subject site; and

WHEREAS, the Board notes that while separate applications were filed for each of 16 properties, in the interest of convenience, the cases were heard together and the record is the same for each of the applications; and

WHEREAS, a public hearing was held on this application on July 15, 2008, after due notice by publication in *The City Record*, and then to decision on July 29, 2008; and

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

WHEREAS, the subject premises are located on the west side of Mill Road, between Aviston Street and Dugdale Street; and

WHEREAS, the premises is currently located within an R3X zoning district, but were formerly located within an R3-2 zoning district; and

WHEREAS, the development complies with the former R3-2 zoning district parameters as to floor area, building height, and lot coverage; and

WHEREAS, however, on December 3, 2003 (hereinafter, the "Enactment Date"), the City Council voted to adopt a rezoning of the area, which rezoned the sites to R3X; and

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

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

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

WHEREAS, on April 25, 2006, under BSA Cal Nos. 374-05-BZY thru 399-05-BZY, the Board approved a two-year extension under ZR § 11-332 to complete construction of 26 townhouses, after determining that all subject building permits were lawfully issued and that substantial completion of the development had been performed and substantial expenditures were incurred; and

WHEREAS, the two-year extension to complete construction expired on April 25, 2008; and

WHEREAS, the applicant completed construction and received certificates of occupancy for ten of the original 26 townhouses which were addressed by the Board's grant; and

WHEREAS, because the two-year time limit granted by the Board under ZR § 11-332 has expired and construction of the remaining 16 townhouses, is still ongoing, the applicant seeks a second two-year extension of term allowable under ZR § 11-332; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-

complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB, prior to the Enactment Date: Permit Nos. 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, and 500592735-01-NB, (hereinafter, the "New Building Permits"); and

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

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes

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substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR §11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR §11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the framing and stairs for each of the townhouses, as well as the majority of all remaining work items associated with storm drainage, windows, roofing, plumbing, electrical, and interior finishes and appliances; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; an affidavit from the general contractor describing the work done and estimate of the time remaining to obtain a certificate of occupancy; construction documents indicating the work completed; breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the development's interior and exterior showing complete framing and stairs; and

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

WHEREAS, the Board notes that the actual completion of physical construction is substantial in itself, in that it resulted in tangible above-grade construction; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,279,660, or approximately 70 percent, of the \$1,820,800 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR §11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR §11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of

time to complete construction, pursuant to ZR §11-332; and

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 500592637-01-NB, 500592646-01-NB, 500592655-01-NB, 500592664-01-NB, 500592726-01-NB, 500592717-01-NB, 500592708-01-NB, 500592691-01-NB, 500592682-01-NB, 500592673-01-NB, 500592780-01-NB, 500592771-01-NB, 500592762-01-NB, 500592753-01-NB, 500592744-01-NB, 500592735-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on July 29, 2010.

Adopted by the Board of Standards and Appeals, July 29, 2008.

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**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 – None.

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

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**34-08-A**

APPLICANT – Kevin Christopher Shea, for Neighbors Allied for Good Growth (“NAG”) and People’s Firehouse, Inc. (“PFI”).

OWNER: North Seven Associates LLC

SUBJECT – Application February 20, 2008 – Appeal seeking to revoke permit and approvals that allow the construction of a sixteen story building in violation of ZR §23-142 and ZR §12-10 which fails to provide adequate open space on the zoning lot to support the Building's floor area.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Kevin Christopher Shea, Councilmember Tony Avella, Kate Spaulding, Philip De Paulo, Doris Vila Lidet, Peter Gillespre, Kailin Husayko, Stephanie Trayer and B. Ersiberg.

For Opposition: Peter Geis and Lisa Orrantia, Department of Buildings.

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

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REGULAR MEETING  
TUESDAY AFTERNOON, JULY 29, 2008  
1:30 P.M.

47-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Elizabeth Ave Realty Corp., owner.

SUBJECT – Application March 3, 2008 – Proposed construction of a two family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-2.

PREMISES AFFECTED – 7228 Thursby Avenue, north side Thursby Avenue, 247.50’ west of intersection with Beach 72<sup>nd</sup> Street, Block 16066, Lot 46, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Trevis Saugue.

**ACTION OF THE BOARD** – Laid over to August 26, 2008, at 10 A.M., for continued hearing.

95-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for 6701 Realty, LLC, owner.

SUBJECT – Application April 16, 2008 – An appeal seeking a determination that the property owner has acquired common law vested right to continue development under the prior C4-3 zoning district regulations. C4-2A zoning district.

PREMISES AFFECTED – 6701 Bay Parkway, southeast corner of the intersection of Bay Parkway and West 8<sup>th</sup> Street, Block 6576, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Marvin Mitzner.

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

*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

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

**ZONING CALENDAR**

**109-07-BZ**

APPLICANT – Jeffrey A. Chester, Esq., for Sano Construction Corporation, owner.

SUBJECT – Application May 3, 2007 – Variance (§72-21) to construct on an undersized, triangular lot a two story single family residence. This application seeks to vary lot coverage (§23-141); less than the required front yard (§23-45) and less than the required side yards (§23-461) in an R-5 zoning district.

PREMISES AFFECTED – 33-57 59<sup>th</sup> Street, triangle formed by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, Block 1183, Lot 70, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Jeffrey Chester.

**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 December 31, 2007, acting on Department of Buildings Application No. 402055878, reads in pertinent part:

- ZR 23-141(b) Lot coverage exceeds the maximum
- ZR 23-45(a) Front yard required 10’ provided 0’
- ZR 23-461(a) Side yard(s) required 13’ (5’ & 8’) provided 0’
- ZR 22-00 Zero lot line buildings are not permitted in R5 district”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a two-story single-family home that exceeds the maximum lot coverage, is built to the lot line and does not provide the required front and side yards, contrary to ZR §§ 23-141(b), 23-45(a), 23-461(a) and 22-00; and

WHEREAS, a public hearing was held on this application on April 1, 2008, after due notice by publication in *The City Record*, with continued hearings on April 1, 2008, May 6, 2008, June 3, 2008 and July 1, 2008, and then to decision on July 29, 2008; and

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

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Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, citing concerns about potential incompatibility with neighborhood character; and

WHEREAS, members of the Woodside Triangle Block Association and other local residents testified in opposition to this application, citing concerns with the loss of open space and street trees; and

WHEREAS, the site is located on a triangular property bounded by 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street in an R5 zoning district; and

WHEREAS, the site has 75.94 feet of frontage on 59<sup>th</sup> Street, 67.92 feet of frontage on 60<sup>th</sup> Street and 33.96 feet of frontage on 34<sup>th</sup> Avenue, and a total lot area of 1,150 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home with approximately 1,436 sq. ft. of floor area (1.25 FAR) and one off-street parking space; and

WHEREAS, the proposed home will provide a lot coverage of 86 percent, be built to the lot line along 34<sup>th</sup> Avenue and 60<sup>th</sup> Street, and has no front yard or side yards; and

WHEREAS, the zoning regulations require a front yard with a minimum depth of 10'-0"; two side yards with minimum widths of 5'-0" and 8'-0", respectively, and limit lot coverage to a maximum of 55 percent; and

WHEREAS, the applicant states that the front yard, side yard, lot coverage and lot line 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 narrow triangular shape of the subject lot; and

WHEREAS, the applicant states that the three streets bounding the subject lot form a nearly perfect right triangle which is only 34'-4" at its widest point; and

WHEREAS, the applicant represents that it is the only triangular-shaped lot found within a 400 foot radius surrounding the subject site; and

WHEREAS, the applicant represents that without the requested front yard, side yard, lot coverage and lot line waivers, no habitable building could be built on the site; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard, side yard, lot coverage and lot line 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, at hearing, local residents testified that the site was used by them as a de facto park and that the building of a home would thereby cause the loss of a neighborhood recreational resource; and

WHEREAS, the applicant states that the site is a vacant lot with a continuous history of private ownership which is zoned for residential development and, further, that the use of the site by neighborhood residents has established no claim of right under the law; and

WHEREAS, the Board notes that any dispute as to the ownership of the site can be resolved in another forum; and

WHEREAS, at hearing, local residents raised issues with the accuracy of the survey and plot plan; and

WHEREAS, the applicant submitted a revised site plan depicting all curbs and utilities indicated on the architectural survey; and

WHEREAS, at hearing, local residents also raised concerns with the loss of mature trees resulting from the excavation and construction of a home on the site; and

WHEREAS, the applicant states that two trees within and adjoining the property must be removed to accommodate the home, and that the other existing trees on the site will be retained; and

WHEREAS, the applicant submitted a revised plot indicating the trees to be retained and removed, as well as the additional landscaping to be provided pursuant to the recently adopted Street Tree Planting text amendment to the Zoning Resolution; 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 triangular shape; and

WHEREAS, the applicant further states that these conditions originate with the mapping of 59<sup>th</sup> Street, 34<sup>th</sup> Avenue and 60<sup>th</sup> Street bounding the subject lot; and

WHEREAS, at hearing, local residents 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 therefore finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant complies with the R5 zoning district regulations for use, floor area, FAR,

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height, setback, and off-street parking; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, the proposed construction of a, to permit, within an R5 zoning district, the proposed construction of a two-story single-family home that exceeds the maximum lot coverage, is built to the lot line and that does not provide the required front and side yards contrary to ZR §§ 23-141(b), 23-45(a), 23-461(a) and 22-00; *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 July 16, 2008”—(8) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 1,436 sq. ft. of floor area (1.25 FAR), a wall height of 18’-11””; a total height of 26-5””, and one off-street parking space, 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 this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## 114-07-BZ

### CEQR #07-BSA-080R

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

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

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

### COMMUNITY BOARD #7Q

#### APPEARANCES –

For Applicant: Joseph P. Morsellino.

**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 August 10, 2007, acting on Department of Buildings Application No. 402470526, reads, in pertinent part:

“Provide special use permit from the Board of Standards and Appeals as per ZR 42-31 Use Group 3 (School)””; and

WHEREAS, this is an application under ZR § 73-19 to permit, on a site partially within an M1-1 zoning district and partially within an R2A zoning district, the proposed operation of a daycare center (Use Group 3); and

WHEREAS, a public hearing was held on this application on October 2, 2007, after due notice by publication in the *City Record*, with continued hearings on November 27, 2007, January 15, 2007, April 1, 2008, May 20, 2008 and then to decision on July 29, 2008; and

WHEREAS, the site 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 7, Queens, recommends disapproval of this application, citing concerns about traffic safety; and

WHEREAS, the Queens Borough President recommends disapproval of this application; and

WHEREAS, City Council Member Tony Avella recommends disapproval of this application, citing the same concerns as the Community Board; and

WHEREAS, certain neighborhood residents testified in opposition to the school (the “Opposition”) citing concerns with traffic and the lack of parking; and

WHEREAS, the application is brought on behalf of and will be operated by Kiddie Academy, a private daycare operator; and

WHEREAS, the site is located on the east side of 152<sup>nd</sup> Street at the intersection with Powell’s Cove Boulevard; and

WHEREAS, the majority of the site is located within an M1-1 zoning district (with a sliver along the southern property line within an R2A zoning district) and has a lot area of 8,221.6 sq. ft.; it is currently vacant; and

WHEREAS, the Board notes that because the width of the portion of the site within the R2A zoning district is less than 25 feet, the entire site is subject to the regulations of the M1-1 zoning district, in which a daycare center classified as a Use Group 3 school, such as that proposed, is not permitted as of right; and

WHEREAS, the applicant proposes to construct a three-story building for use as a daycare center with a floor area of 11,253 sq. ft. (1.38 FAR) and offices (Use Group 6) with a floor area of 3,834 sq. ft. (0.47 FAR) for a total floor area of 15,087 sq. ft. (1.85 FAR); and

WHEREAS, the first and second floors will be occupied by the daycare center and the third floor will be occupied by an independent office tenant; the cellar will be occupied by 18

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parking spaces; and

WHEREAS, the office use is as of right and only the daycare use requires a special permit pursuant to ZR § 73-19; all the proposed building parameters are as of right; and

WHEREAS, the applicant states that the proposed daycare use meets the ZR § 12-10 definition of school, as it is will operate “under a permit issued pursuant to Section 47.03 of the New York City Health Code;” and

WHEREAS, the proposed daycare center will accommodate a maximum of 190 children and 30 employees; and

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

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, specifically, a site with a lot area of approximately 22,500 sq. ft. would be required to accommodate a daycare center of 11,253 sq. ft. as of right in the adjacent R2A zoning district; and

WHEREAS, the applicant represents that there are not available sites within the adjacent R2A zoning district where construction of a new daycare would be feasible; and

WHEREAS, in support of this assertion, the applicant submitted a land use map and photographs, which reflect that all the sites within the adjacent R2A zoning district are developed and could not accommodate the proposed use; and

WHEREAS, the Opposition asserts that there are potential alternative development sites; and

WHEREAS, at hearing, the applicant stated that there were formerly two vacant lots in the vicinity, which are both currently under development for residential use; and

WHEREAS, additionally, the applicant stated that other sites identified by the Opposition were not within the immediate area and did not serve the daycare center’s programmatic need of attracting students from the surrounding area; and

WHEREAS, the applicant maintains that the results of the site search shows that there is no practical possibility of obtaining a site of adequate size for the school in a nearby zoning district where it is permitted as of right; and

WHEREAS, the evidence submitted into the record reflects that all adequately-sized sites in the community are developed; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, as noted, the land use map reflects that the site directly abuts an R2A zoning district which includes

a sliver of the subject site along its southern lot line, where the proposed use would be permitted as of right; the entire site has a width of 87 feet and is thus less than 87 feet from the R2A zoning district at its furthest point; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise: traffic and other adverse effects of the surrounding M1-1 zoning district is provided in that (1) there is minimal traffic on the street due to it being located at a dead-end; (2) the site abuts a residential use on one side and a proposed commercial office building on the other; (3) there is a drop in elevation at the rear of the site, which creates a distance between the proposed building and any adjacent use at the rear; and (4) the applicant proposes the use of sound-attenuating window and wall construction; and

WHEREAS, further, the applicant notes that although the majority of the site is within an M1-1 zoning district, the area is primarily developed with residential uses and commercial uses such as Use Group 6 offices, which are compatible with the proposed daycare center; and

WHEREAS, the area south of the site, within the adjacent R2A zoning district is occupied with single-family homes; and

WHEREAS, the applicant has submitted evidence supporting the above assertions; and

WHEREAS, the Board accepts that the conditions on nearby sites and the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of any the uses within the M1-1 zoning district surrounding the site; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that, although there will be certain peak periods at the beginning and end of the day, the child drop-offs/pick-ups will be spread over a 12-hour period; and

WHEREAS, at hearing, the Board directed the applicant to analyze alternate design options, which could aid traffic circulation directly in front of the building and ease any potential congestion; and

WHEREAS, in response, the applicant redesigned the site plan to include a lay-by, which allows for at least three cars to temporarily pull off the street in a parallel direction while loading and unloading children at the site; and

WHEREAS, the applicant provided a letter from the Department of Transportation (DOT), which states that the lay-by will be permitted; and

WHEREAS, during the hearing process, the applicant revised the plans to add four parking spaces within the

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parking facility to be reserved for pick-up/drop-off; and

WHEREAS, the applicant also performed a parking survey which reflects the availability of between eight and 33 off-street parking spaces on 152<sup>nd</sup> Street, between Tenth Avenue and Powell's Cove Boulevard and along Powell's Cove Boulevard, between 152<sup>nd</sup> Street and 151<sup>st</sup> Street during the peak hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.; and

WHEREAS, additionally, DOT provided a letter which states that it foresees being able to grant a request to install signs which state "No Parking 7:00 a.m. to 4:00 p.m. School Days" in front of the daycare facility to insure that the lay-by area is not obstructed by cars not associated with it; and

WHEREAS, as per the special permit requirements, the Board referred the application to DOT's Child Safety Unit; and

WHEREAS, in response, DOT provided a letter, which states that the number of students – from 134 to a maximum of 190 – does not meet the minimum threshold of 250 students to warrant a safe route to school map with pavement markings and school signs; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, neighborhood residents testified as to a lack of available parking in the area surrounding the school and raised concerns with the demand for staff parking for the school; and

WHEREAS, the applicant notes that there is no parking requirement for the proposed use located in an M1-1 zoning district and that only eight parking spaces would be required if it were instead located in the adjacent R2A zoning district; 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 proposed project will not interfere with any pending public improvement project; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 07BSA081Q, dated May 4, 2007; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (DEP) has reviewed the following submissions from the applicant: May 2007 Environmental Assessment Statement (EAS); January 2008 Phase II Workplan and Construction Health and Safety Plan (CHASP); June 2008 Remedial Action Plan (RAP) and CHASP; July 8, 2008 RAP Addendum, March 26, 2008 and July 1, 2008 Industrial Source Analysis, and an April 4, 2008 Ambient Noise Survey; and

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

WHEREAS, DEP has determined the RAP/CHASP to be acceptable and determined that there would not be any potential air quality and noise impacts on the subject proposal; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a daycare center (Use Group 3), on a site partially within an M1-1 zoning district and partially within an R2A zoning district; *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 December 20, 2007" – six(6) sheets and "Received April 11, 2008" – one(1) sheet; and *on further condition*:

THAT any change in the use, occupancy, or operator of the daycare facility space requires review and approval by the Board;

THAT the space occupied by the daycare facility is limited to a floor area of 11,253 sq. ft. and eight onsite parking spaces;

THAT the use and occupancy of the space associated with the special permit and the proposed daycare center use shall be restricted to such use;

THAT a lay-by will be provided, as reflected on the BSA-approved plans;

THAT prior to the issuance of any permit, the applicant must satisfy DOB's requirements for establishing the proposed use as a Use Group 3 school, pursuant to ZR §§12-10 and 73-

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19;

THAT accordingly, the proposed bulk of the building is to be reviewed and approved by DOB;

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA approved plans;

THAT as proposed in the RAP, upon completion of the construction activities, a Closure Report certified by a Professional Engineer or Architect shall be submitted to DEP for review and approval;

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

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

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

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## 58-08-BZ

### CEQR #08-BSA-067M

APPLICANT – Fried, Frank Harris, Shriver & Jacobson LLP, Waldo Hutchins & J.P. Morgan Chase Bank Trustee for Estate of Francis S. Appleby, owner; The Durst Organization, lessee.

SUBJECT – Application March 14, 2008 – Special Permit (§73-19) to allow the development of a six-story school (U.G 3) on a vacant site. The proposal is contrary to §42-12. M1-5 and C4-7 districts.

PREMISES AFFECTED – 614-632 West 58<sup>th</sup> Street, Twelfth Avenue, West 57<sup>th</sup> Street, West 58<sup>th</sup> Street, Eleventh Avenue, Block 1105, Lots 5, 14, 19, 43, Borough of Manhattan.

### COMMUNITY BOARD #4M

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, the decision of the Manhattan Borough Commissioner, dated May 7, 2008, acting on Department of Buildings Application No. 110085568 reads, in pertinent part:

“The proposed 6 story building containing community facility (UG 3 School) in an M1-5 zoning district is not permitted as of right and is contrary to section 42-10”; and

WHEREAS, this is an application under ZR § 73-19 to permit, within a site partially within an M1-5 zoning district and partially within a C4-7 zoning district, the proposed

development of a pre-school through 12<sup>th</sup> grade independent school (UG 3); and

WHEREAS, the application is brought on behalf of the Durst Organization, the building will be occupied by Nations Academy (“Nations Academy” and the “School”), an independent school to be owned and operated by Cities School Network, Inc. (“CSN”), a not-for-profit organization; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in the *City Record*, with a continued hearing on June 24, 2008 and then to decision on July 29, 2008; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application subject to the following conditions: (1) that certain traffic safety and community benefit recommendations be required; (2) that sanitation trucks and charter buses no longer park on West 58<sup>th</sup> Street; and (3) that a bus stop for shuttle buses be established; and

WHEREAS, certain neighborhood residents testified in opposition to the school citing concerns with traffic and child safety; and

WHEREAS, the site is a through-lot mid-block parcel bounded by 58<sup>th</sup> Street on the north and 57<sup>th</sup> Street on the south, located 270 feet west of Eleventh Avenue; and

WHEREAS, the site is located partially within an M1-5 zoning district and partially within a C4-7 zoning district and has a total lot area of 59,246 sq. ft.; and

WHEREAS, the subject site is currently a vacant lot; and

WHEREAS, the applicant proposes to build a six-story and cellar mixed-use building with a total floor area of 235,000 sq. ft. and an FAR of 4.0 for the building’s footprint; and

WHEREAS, the subject site occupies the mid-block portion of a 160,666 sq. ft. zoning lot comprising the entirety of Block 1105; and

WHEREAS, the applicant represents that Block 1105 was rezoned in 2001 to facilitate its development as a General Large Scale Development, which also included approvals of: (i) a special permit pursuant to ZR §§ 13-562 and 74-52 to allow an attended parking garage with a maximum capacity of 399 spaces in the mid-block portion of the block; and (ii) the establishment of an envelope for development of the zoning lot (collectively, the “2001 Approvals”); and

WHEREAS, the terms of the 2001 Approvals and an associated restrictive declaration also require retail use long the West 57<sup>th</sup> Street frontage of the mid-block portion of Block 1105, and the widening of West 58<sup>th</sup> Street to 38’-0” to provide two 11-foot wide travel lanes and two eight-foot wide curbside lanes; and

WHEREAS, the building is proposed to include the following uses: (i) a school (UG 3) on the first through sixth floors for children in pre-school through 12<sup>th</sup> grades; (ii) ground-floor retail space; and (iii) a 399-car below-grade parking garage; and

WHEREAS, the proposed parking garage and 16,500 sq.

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ft. ground floor retail space (0.28 FAR); are contemplated by the 2001 Approvals and are not before the Board; and

WHEREAS, the school is proposed to have a floor area of 218,500 sq. ft. (FAR of 3.7); 101,000 sq. ft. (fronting the north side of West 57<sup>th</sup> Street) is within a C4-7 zoning district and 117,500 (fronting the north side of 58<sup>th</sup> Street) is within an M1-5 district where such use is not permitted; and

WHEREAS, this is an application pursuant to ZR § 73-19 to permit the development of a school located within an M1-5 zoning district; and

WHEREAS, the School represents that it complies in all respects with the height and setback envelope established by the 2001 Approvals; and

WHEREAS, the applicant represents that the special permit request is necessitated by the need to provide an integrated global curriculum to serve the growing population of families who are internationally mobile, as well as local families seeking an independent school for their children; and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an M1-5 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, within districts where the school is permitted as of right, sufficient to meet the programmatic needs of the school; and

WHEREAS, the proposed building will serve an estimated 1,750 students from pre-school through 12<sup>th</sup> grade, distributed among an Early Childhood Center, Lower School and Upper School; and

WHEREAS, the applicant represents that the school hours will be Monday through Friday from 8:00 a.m. to 3:45 p.m.; and

WHEREAS, the School's program includes classrooms, art studios, gymnasiums, an auditorium, cafeteria, administrative offices, and a rooftop athletic field; and

WHEREAS, the applicant states that a six-story building with floor area of at least 220,000 sq. ft., high ceilings, and the ability to create column free space for gymnasiums and assembly space is necessary to accommodate Nations Academy's program; and

WHEREAS, the applicant represents that the program of Nations Academy also requires several floor plates of at least 60,000 sq. ft. to enable the siting of its gymnasium space and theater adjacent to their respective support spaces; and

WHEREAS, the applicant further states that large floor plates are also necessary to cluster certain classrooms and functional rooms and areas to allow for the efficient functioning of the Early Childhood Center, Lower School and Upper School; and

WHEREAS, the applicant represents that most of the families likely to be served by the school live on the Upper West Side and the Upper East side of Manhattan; and

WHEREAS, thus, the applicant undertook a search for an adequately sized development site or existing buildings within the area bounded by Canal Street on the south, the Astoria waterfront on the east, and 141<sup>st</sup> Street on the north; and

WHEREAS, the applicant states that the feasibility of five Manhattan buildings located at 2350 Fifth Avenue, 5030 Broadway, 550-580 Washington Street, 200 Fifth Avenue and 636 Eleventh Avenue was fully evaluated; and

WHEREAS, each of the five buildings was found to be either geographically remote and not readily accessible by public transportation, structurally unsuitable, or economically infeasible; and

WHEREAS, in addition to the subject site, the applicant states that it also evaluated the feasibility of four vacant or largely vacant sites: three Manhattan sites located on Eleventh Avenue between 42<sup>nd</sup> Street and 43<sup>rd</sup> Street, Tenth Avenue between 42<sup>nd</sup> Street and 41<sup>st</sup> Street, and Eleventh Avenue between 53<sup>rd</sup> Street and 54<sup>th</sup> Street, respectively; and a site located within the Queens West development in Long Island City, Queens at 46-15 Center Boulevard; and

WHEREAS, the applicant states further that none of the alternative vacant or largely vacant sites were found to be able to accommodate the School; and

WHEREAS, the applicant maintains that the results of the site search shows that there is no practical possibility of obtaining a site of adequate size for the school in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant states that the southern portion of the project site is located within a C4-7 zoning district in which a school would be permitted as of right; accordingly the school will be located not more than 400 feet from the boundary of a district in which a school is permitted as of right; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating exterior wall and window construction; and

WHEREAS, the applicant further states that the school design will include double-glazed windows and a dedicated outdoor air system of ventilation to achieve interior noise levels that comply with the standards set forth in the New York City CEQR Technical Manual; and

WHEREAS, the applicant further states that the school will face 58<sup>th</sup> Street, which is lightly trafficked, and where a

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Consolidated Edison facility generates limited noise or other adverse effects; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant has submitted a school safety plan addressing measures necessary for the safety of students and staff traveling to and from the school; and

WHEREAS, the applicant states that a modal trip analysis projects that approximately 37 percent of the students will travel to school by subway, 15.5 percent will arrive by school bus, 7.1 percent will arrive by public bus, 13.7 percent by private car, 6.7 percent by taxi; and the remaining 20 percent will arrive by bicycle, by foot or by ferry; and

WHEREAS, the applicant represents that West 58<sup>th</sup> Street, where the School's main entrance is sited, attracts relatively little vehicular traffic because it is dominated by a Consolidated Edison facility with few employees and because drivers cannot gain access to Route 9A from its western terminus; and

WHEREAS, the applicant further represents that the roadbed of West 58<sup>th</sup> Street between Eleventh and Twelfth Avenues will be widened from 34'-0" to 38'-0" concurrently with the construction of the school, thereby allowing the development of a drop off lane which is separate from the eastbound travel lane; and

WHEREAS, the applicant states that safety to students entering and leaving the School will be further enhanced by the provision of a designated entrance for the pre-school which is separate from the entrance for the entrance for the upper and lower school, thereby spreading out vehicle drop off and pick up points; and

WHEREAS, the School will further prohibit vehicle drop off and pick up of students at its secondary entrance located on 57<sup>th</sup> Street; and

WHEREAS, in addition, the applicant states that it is applying to the New York City Department of Transportation to create a no-standing zone during School hours at the designated drop off/ pick up points; and

WHEREAS, the New York City Department of Transportation ("DOT") has conducted a traffic safety review of the subject proposal; and

WHEREAS, the Board notes that DOT has also begun preparations for the installation of signs and markings at intersections surrounding the School; and

WHEREAS, Community Board 4, Manhattan recommended that traffic monitors also assist children crossing 58<sup>th</sup> Street at 11<sup>th</sup> Avenue on the way to and from the School; and

WHEREAS, in response to the Community Board's

request, a submission by Nations Academy states that during peak drop off and pick up hours, a school traffic coordinator will assist with the loading and unloading of children from vehicles and will coordinate staff providing assistance to pedestrian students crossing the intersection of 58<sup>th</sup> Street and Eleventh Avenue; and

WHEREAS, Community Board 4, Manhattan also recommended that measures be taken to protect students crossing in front of the entrance to the parking garage to be built on the site, and the parking lot to the east of the School; and

WHEREAS, in response, the applicant agreed to place warning signs at the entrance and exit to the garage marking the area as a school crossing zone with a maximum speed of five miles per hour, and to place moveable physical barriers on either side of the parking garage and at the parking lot entrance; and

WHEREAS, Community Board 4, Manhattan had recommended additional traffic control measures including: (i) changing pedestrian crossing times on Eleventh Avenue between 48<sup>th</sup> Street and 57<sup>th</sup> Street; (ii) relocating parking by sanitation trucks and charter buses on West 58<sup>th</sup> Street; (iii) establishing a bus stop for shuttle buses; and (iv) installing articulated safety controls at the entrance to an adjacent storage facility; and

WHEREAS, a response by the applicant indicates that the allotted crossing times for red and green lights meet the standards required for both adults and children; however, the Board notes that none of the afore-mentioned recommendations are within the control of the applicant, nor within the Board's jurisdiction; and

WHEREAS, the Board finds that the movement of the traffic through the street on which Nations Academy is located can be controlled so as to protect children going to and from the school; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, Community Board 4, Manhattan, requested that the applicant comply with certain community benefit recommendations, including the sponsorship of a job fair and the provision of financial aid to students residing in adjacent community districts; and

WHEREAS, although such recommendations exceed the scope of the Board's jurisdiction, the applicant has agreed to comply with them; 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 proposed project will not interfere with any pending public improvement project; and

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

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WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617(ak); 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. 08BSA067M, dated July 28, 2008; and

WHEREAS, the EAS documents that the proposed school 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 Office of Environmental Planning and Assessment of the New York City Department of Environmental Protection (“DEP”) has reviewed the following submissions by the applicant: Petroleum Spill Reports 95-01523, 96-07862, and 98-10172, subsequent spill investigations, and proposed remedial measures submitted to the New York State Department of Environmental Conservation (“DEC”); and a February 2008 EAS; a June 1998 Phase I Environmental Site Assessment Report; a March 14, 2008 Spill Closure Work Plan; a May 29, 2008 update to the Spill Closure Work Plan; and Air Quality and Noise Response submissions dated May 7, 2008 and July 3, 2008; and

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

WHEREAS, with respect to Hazardous Materials; a Spill Closure Work Plan Update was approved by DEC on June 4, 2008 requiring certain remediation measures pertaining to the petroleum spill conditions on the site; and

WHEREAS, prior to the issuance of any building permits, and prior to any additional construction activities at the site, the development of a Supplemental Remedial Action Plan (“RAP”) and a Construction Health and Safety Plan (“CHASP”) approved by DEP is required to ensure that necessary remedial measures are undertaken so that the proposed action does not result in a significant adverse impact on human health and the environment from the identified soil and groundwater contamination; and

WHEREAS, subsequent to DEP approval of the RAP and CHASP, a Remedial Closure Report certified by a Professional Engineer, must be submitted to DEP showing that all remedial requirements have been properly implemented before proceeding with construction; and

WHEREAS the issuance of a Notice to Proceed under the “E” Designation for the subject property is contingent on DEP approval of the supplemental RAP and CHASP, and the issuance of a Notice of Satisfaction is contingent on DEP approval of a Remedial Closure Report; and

WHEREAS, with respect to air quality, a stationary source screening analysis for the heating, ventilating, and air conditioning equipment (HVAC) of the proposed project

was performed pursuant to the CEQR Technical Manual; and

WHEREAS, to avoid potential significant air quality impacts to the surrounding area, the stationary source screening analysis determined that the School’s stack must be set back a minimum of 187 feet from the 12th Avenue lot line, if the School is heated by No. 2 fuel oil, and at least 151 feet from the 12th Avenue lot line if the School is heated by natural gas; and

WHEREAS, the chemical spill analysis determined that the School’s fume hood exhaust must be placed at least 65 feet away from the 12<sup>th</sup> Avenue lot line to avoid any potentially significant air quality impacts from spills in the School’s laboratory; and

WHEREAS, the site is located approximately 255 feet from the 12<sup>th</sup> Avenue lot line and, therefore, is not anticipated to result in potentially significant adverse air quality impacts from chemical spills or from stationary sources if No. 2 oil or natural gas is used to heat the building; and

WHEREAS, an industrial source screening analysis shows that the students and staff of the School would not be impacted by the New York City Department of Sanitation garage located at 639-645 West 55<sup>th</sup> Street, or by other surrounding manufacturing/industrial uses; and

WHEREAS, with respect to noise, as the proposed project would be a sensitive receptor, a noise monitoring study was conducted to determine the level of window/wall attenuation required to achieve an acceptable interior noise levels; and

WHEREAS, according to the noise monitoring study, double glazed windows would be required to achieve a 35 dBA of attenuation for each building façade, and a dedicated outdoor air system (DOAS) is required for ventilation in order to maintain a closed-window condition; and

WHEREAS, as the site has an “E” designation for noise (E-103), before construction can begin the applicant must demonstrate that the windows achieve the required attenuation values and that the ventilation equipment is consistent with the equipment identified by the EAS; and

WHEREAS, the noise monitoring study found that the mechanical system and rooftop playground of the proposed building would not result in any significant adverse noise impacts at neighboring sensitive receptor locations; and

WHEREAS, the applicant has agreed to install double glazed windows that achieve a 35 dBA of attenuation for each building façade and a DOAS, therefore, the proposed project is not anticipated to result in significant adverse noise impacts; 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

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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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed operation of a school serving children from pre-school through 12th grade (Use Group 3), located partially within an M1-5 zoning district and partially within a C4-7 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application, with Drawing A-0 marked "Received July 29, 2008"-(1)sheet and Drawings A-1 through A-7 marked "Received May 6, 2008"-(7)sheets and Drawings A-8 through A-10 marked "Received March 3, 2008"-(3)sheets; and *on further condition*:

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA approved plans;

THAT prior to the issuance of any building permits, and prior to any additional construction activities at the site, the New York City Department of Environmental Protection ("DEP") must approve a supplemental Remedial Action Plan ("RAP") and Construction Health and Safety Plan ("CHASP");

THAT DEP shall be contacted to coordinate the timing and completion of field testing and soil remediation activities;

THAT a dedicated outdoor air system and double glazed windows on each facade capable of achieving a 35 dBA of attenuation shall be provided;

THAT the School's stack shall be set back a minimum of 187 feet from the 12<sup>th</sup> Avenue lot line;

THAT heating, ventilating, and air conditioning (HVAC) equipment shall be fueled by natural gas, or No. 2 fuel oil;

THAT the issuance of a permanent certificate of occupancy be conditioned on the securing of a charter allowing operation of the School pursuant to the requirements of the New York State Education Law;

THAT the certificate of occupancy shall state that the number of students is limited to 1,750;

THAT construction shall be completed within four years of the date of the grant;

THAT a drop-off/pick-up area shall be maintained in front of the school on West 58<sup>th</sup> Street;

THAT the applicant shall provide a dedicated employee to coordinate assistance to students entering and leaving the building at 58<sup>th</sup> Street during the hours of 7:30 a.m. and 9:00 a.m. and 2:30 p.m. and 4:30 p.m.;

THAT, subsequent to construction of the school, and while the subject property is being used as a school, no application for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, beyond that performed for the current project, shall be submitted to or accepted from the Department of Buildings, until such activities have been coordinated with DEP;

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.

Adopted by the Board of Standards and Appeals, July 29, 2008.

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## 134-06-BZ

APPLICANT – Sheldon Lobel, P.C., for 241-15 Northern LLC, owner.

SUBJECT – Application June 26, 2006 – Variance under § 72-21 to allow a five (5) story residential building containing 40 dwelling units and 63 accessory parking spaces. Proposal is contrary to regulations for use (§ 22-12), floor area and FAR (§ 23-141), open space (§ 23-141), front yard (§ 23-45), height and setback (§ 23-631) and maximum number of dwelling units (§23-22). R1-2 district.

PREMISES AFFECTED – 241-15 Northern Boulevard, northwest corner of the intersection between Northern Boulevard and Douglaston Parkway, Block 8092, Lot 39, Borough of Queens.

## COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Council Member Tony Avella, Marc Bresky, Marie Marsina, Elliott Socci, Stuart Hersh and Joseph Hellmann.

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 September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 201-07-BZ

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

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

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

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for deferred decision.

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## 245-07-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for Hawthorne Village, LLC, owner.

SUBJECT – Application October 30, 2007 – Variance (§ 72-21) to allow the residential conversion of an existing five-story industrial building. Proposed project will contain

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147 dwelling units, ground floor retail space and 59 accessory parking spaces. Proposal is contrary to use regulations (§ 42-00). M1-2 district.

PREMISES AFFECTED – 220 Water Street, between Water and Bridge Streets, Block 41, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Chris Wright and Jack Freeman.

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 September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 248-07-BZ

APPLICANT – Akeeb Shekoni, for Bhola Trilok, owner.

SUBJECT – Application October 31, 2007 – Variance (§72-21) for legalization of three story, two family home, in an R5 zoning district, which was built on an undersized lot contrary to (§ 23-33) for minimum lot width.

PREMISES AFFECTED – 32-15 60<sup>th</sup> Street, between Northern Boulevard and 32<sup>nd</sup> Avenue, Block 1161, Lot 29, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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## 9-08-BZ

APPLICANT – Rampulla Associates Architects, for Joseph Vitacco, owner.

SUBJECT – Application January 3, 2008 – Variance (§ 72-21) to construct a single family detached residence on a vacant, corner lot that has less than the minimum lot area (§ 107-42); to vary side yards (§ 23-462) and front yards (§ 23-45) in an R3-X SRD (Special Richmond District) SGMD (Special Growth Management District) zoning district.

PREMISES AFFECTED – 555 Foster Road, east side from the intersection of Foster Road and Stafford Avenue, Block 6892, Lot 8, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 16, 2008, at 1:30 P.M., for continued hearing.

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## 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 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Phil Rampulla.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

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## 39-08-BZ

APPLICANT – Eric Palatnik, P.C., for Kenbar Development, owner; Synergy Fitness, lessees.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the first floor of the subject building. The proposal is contrary to section 32-10. C2-1 district.

PREMISES AFFECTED – 77 Richmond Hill Road, middle of the Ken-Bar Plaza shopping center on Richmond Hill Road, Block 2380, Lot 500, Borough of Staten Island.

## COMMUNITY BOARD #2SI

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 September 9, 2008, at 1:30 P.M., for decision, hearing closed.

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## 51-08-BZ

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 –

For Applicant: Francis R. Angelino, Joan Krevin, Harpert Dhaliwal and Michael Hidary.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

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# MINUTES

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## 61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86<sup>th</sup> Street, LLC, owner; TSI Bay Ridge 86<sup>th</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR section 32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86<sup>th</sup> Street, north side of 86<sup>th</sup> Street and east of 4<sup>th</sup> Avenue, Block 6035, Lot 64, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Nicholas Kalliasros.

**ACTION OF THE BOARD** – Laid over to September 9, 2008, at 1:30 P.M., for continued hearing.

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## 67-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Jack M. Skaba, owner.

SUBJECT – Application March 31, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space, lot coverage and floor area (§23-141); less than the minimum side yards (§23-461) and less than the required rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3842 Bedford Avenue, west side of Bedford Avenue, Block 6807, Lot 22, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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 September 16, 2008, at 1:30 P.M., for decision, hearing closed.

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## 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 112<sup>th</sup> Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Adam W. Rothkrug and Mary C.

For Opposition: James Blake.

**ACTION OF THE BOARD** – Laid over to September 23, 2008, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*