BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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

Volume 93, No. 46 December 4, 2008

DIRECTORY

OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006
HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006
BSA WEBPAGE @ http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 788-8500
FAX - (212) 788-8769

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296-08-A
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CALENDAR

DECEMBER 16, 2008, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 16, 2008, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

337-90-BZ
APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.
SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.
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239-07-BZ
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OWNER: YHA New York Inc.
SUBJECT – Application October 24, 2007 – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43/71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.
COMMUNITY BOARD #4Q

63-08-BZ
APPLICANT – New York City Board of Standards and Appeals.
OWNER: Manton Holding, LLC.
LESSEE: Royal Palace
SUBJECT – Application March 27, 2008 – To consider dismissal for lack of prosecution.
PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.
COMMUNITY BOARD #6Q

147-08-BZY
APPLICANT – New York City Board of Standards and Appeals.
OWNER: Beachway Equities, Incorporated.
SUBJECT – Application May 23, 2008 – To consider dismissal for lack of prosecution. Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008.
PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.
COMMUNITY BOARD #12Q

APPEALS CALENDAR

200-08-A
APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Michelle & Robert Bernabo, lessees.
SUBJECT – Application July 29, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of a mapped street and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35.
PREMISES AFFECTED – 171 Bayside Drive, south side Bayside Drive, 138.75' west of Beach 178th Street, Block 16340, Lot 50, Borough of Queens.
COMMUNITY BOARD #14Q

204-08-A
APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Inc., owner; Kathleen & Ralph Reed, lessees.
SUBJECT – Application August 5, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.
PREMISES AFFECTED – 26 Roosevelt Walk, west side Roosevelt Walk, 488.46' south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

205-08-A
APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Domenic Guastadisegni, owner.
SUBJECT – Application August 6, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of mapped street contrary to General City Law Section 35 and not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.
PREMISES AFFECTED – 32 Tioga Walk, west side of Tioga Walk, north of 6th Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

232-08-A
APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary & Steven Maceda, lessees.
SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 zoning district.
PREMISES AFFECTED – 50 Tioga Walk, west side Tioga Walk 126.5' south of 6th Avenue, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

233-08-A
APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Elizabeth & Geoffrey Gilmartin, lessees.
SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Hillside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located within the bed of a mapped street contrary to GCL 35 and the Department of Buildings policy. R4 Zoning District.
PREMISES AFFECTED – 56 Hillside Avenue, south side Hillside Avenue 72.54' west of intersection with Rockaway Point Boulevard, Block, 16340, Lot p/o 50, Borough of Queens.
COMMUNITY BOARD #14Q

240-08-A
APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Victoria and William Fernandez, lessees.
SUBJECT – Application September 25, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street and the upgrade of an existing private disposal system in the bed of the mapped street contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning District.
PREMISES AFFECTED – 167 Bayside Drive, south side of Bayside Drive 100' west of mapped Beach 178th Street, Block 16340, Lot p/o 50, Borough of Queens.
COMMUNITY BOARD #14Q

261-08-BZY & 262-08-A
APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.
An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.
PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.
COMMUNITY BOARD # 7Q

263-08-BZY & 264-08-A
APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.
SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.
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 R7-1/C1-2 Zoning District.
PREMISES AFFECTED – 29-23 40th Road and 30-02 40th Avenue, Block 402, Lots 12 & 35, Borough of Queens.
COMMUNITY BOARD #1Q

DECEMBER 16, 2008, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 16, 2008, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

162-08-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93rd Street Corporation, owner.
SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.
PREMISES AFFECTED – 150 East 93rd Street, southeast corner of East 93rd Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.
COMMUNITY BOARD #8M

198-08-BZ
APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.
SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.
PREMISES AFFECTED – 268 Park Avenue South (aka

268-276 Park Avenue South) west side of Park Avenue South at East 21st Street, Block 850, Lot 39, Borough of Manhattan.
COMMUNITY BOARD #5M

206-08-BZ
APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.
PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Anaapolis Street, Block 15578, Lot 8, Borough of Queens.
COMMUNITY BOARD #14Q

226-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.
SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.
PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.
COMMUNITY BOARD #9BK

250-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.
SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.
PREMISES AFFECTED – 1925 East 5th Street, east side of East 5th Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn
COMMUNITY BOARD # 15BK

251-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Cynthia Esses, owner.
SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing one family residence. This application seeks to vary side yards (§23-48) and less than the required rear yard (§23-47) in an R5 (OP) Special Ocean Parkway District.
PREMISES AFFECTED – 2153 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 50, Borough of Brooklyn.
COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, NOVEMBER 25, 2008
10:00 A.M.

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

SPECIAL ORDER CALENDAR

681-68-BZ
APPLICANT – Gerald J. Caliendo, R.A., AIA, for Sharon Cohen, owner.
SUBJECT – Application June 4, 2008 – Amendment to a previously granted Variance (§72-21) for the change of use on the first floor of an existing one story building from Offices (UG6) and Air-Freight Storage (UG16) to Retail Stores (UG6), in an R3-1 zoning district, with accessory storage in the cellar and accessory parking for patrons to remain.
PREMISES AFFECTED –137-42 Guy Brewer Boulevard, northwest corner of 140th Avenue and Guy Brewer Boulevard, Block 12309, Lot 17, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Sandy Anagnostou.
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.....4
Negative:.....0
Absent: Commissioner Montanez.....1
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance, to permit a change in use from offices (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6); and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

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

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

WHEREAS, Council Member Thomas J. White, Jr. provided testimony in opposition to this application; and

WHEREAS, Queens Borough President Helen Marshall provided testimony in support of the application, with conditions; and

WHEREAS, at hearing, certain members of the community opposed this application, including the United Neighbors Civic Association; and

WHEREAS, the site is located on the northwest corner of the intersection at 140th Avenue and Guy Brewer Boulevard, within an R3-1 zoning district; and

WHEREAS, the site is currently occupied by a one-story building, consisting of offices (Use Group 6) and an air freight terminal (Use Group 16) with accessory storage in the cellar, and an accessory parking area with 35 spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 24, 1964 when, under BSA Cal. No. 877-64-BZ, the Board granted a variance to permit the enlargement of the parking area which was accessory to a one-story retail store building located at the subject premises; and

WHEREAS, on November 26, 1968, under the subject calendar number, the Board granted a variance to permit a change in use of the retail store portion of the building to an air freight terminal; and

WHEREAS, the applicant represents that the portion of the subject building approved for use as an air freight terminal is now occupied by offices (Use Group 6), such that the entire building is currently occupied by offices (Use Group 6); and

WHEREAS, the applicant now seeks an amendment to permit a change in use of the subject building from office use (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6); and

WHEREAS, no enlargement to the subject building or change to the site plan is proposed; and

WHEREAS, the Queens Borough President recommended that the applicant provide screening and landscaping as a buffer to neighboring residences; and

WHEREAS, further, at hearing, the Board requested that the applicant take measures to buffer adjacent residential lots from the proposed retail use of the site; and

WHEREAS, the applicant states that both the southern lot line, adjoining a residential district, and the eastern lot line will be screened with a continuous six-foot high chain link fence with slat enclosures to create a 50 percent opaque effect, with a two-foot wide planting strip along the perimeter of the fence; and

WHEREAS, revised plans submitted by the applicant also indicate that street trees will be planted along Guy Brewer Boulevard and 140th Avenue pursuant to ZR § 26-41, that all lighting in the parking area will be directed down and away from residential properties, and that a loading dock will be provided to ensure that deliveries are made off-street; and

WHEREAS, at hearing, the Board raised concerns as to whether the subject site provides an adequate number of parking spaces for the proposed retail use; and

WHEREAS, the applicant confirmed that the subject site contained only 35 parking spaces while 36 spaces are required for the corresponding C-1 zoning district pursuant to ZR § 36-21; and

WHEREAS, in response, the applicant submitted revised drawings establishing that an additional parking space has been provided; and

WHEREAS, the Board finds that the change of use from offices (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6) will not adversely affect the

character of the neighborhood.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit the change in use from offices (Use Group 6) and air freight terminal (Use Group 16) to retail stores (Use Group 6), *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received October 15, 2008"-(2) sheets and "November 12, 2008"-(1) sheet; and *on further condition*:

THAT the hours of operation of the retail stores shall be limited to: Monday through Sunday, from 8:00 a.m. to 11:00 p.m.;

THAT all signage shall comply with C1 zoning district regulations;

THAT DOB shall review and ensure compliance with landscaping and screening requirements as per the BSA-approved plans;

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

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

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

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.

(DOB Application. No. 410015987)

Adopted by the Board of Standards and Appeals, November 25, 2008.

197-00-BZ

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

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Sandy Anagnostou.

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.....4

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit, to permit an increase in floor area of a physical culture establishment (PCE); and

WHEREAS, a public hearing was held on this application on October 28, 2008 after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

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

WHEREAS, the subject premises is located on the west side of Lexington Avenue between 43rd and 44th Streets, within a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the zoning lot is occupied by a 30-story commercial building; and

WHEREAS, on December 5, 2000, the Board granted a special permit under the subject calendar number to allow the establishment of a PCE occupying 10,950 sq. ft. of floor area on the first floor, 11,750 sq. ft. of floor area on what is known as the "upper first floor," and 5,870 sq. ft. of floor area on the mezzanine level, for a total of 28,570 sq. ft. of floor area; and

WHEREAS, the grant was for a term of ten years, to expire on December 4, 2010; and

WHEREAS, the PCE is operated as an Equinox Fitness facility; and

WHEREAS, on August 22, 2006, the Board amended the grant to allow for an increase of 5,781 sq. ft. of total floor area, from 28,570 sq. ft. to 34,351 sq. ft., with the addition of 2,248 sq. ft. of floor area on the first floor, 1,510 sq. ft. of floor area on the upper first floor, and 2,023 sq. ft. of floor area on the mezzanine level; and

WHEREAS, the applicant now proposes to further enlarge the PCE to include the addition of 1,010 sq. ft. of floor area on the first floor, resulting in an increase in total floor area occupied by the PCE from 34,351 sq. ft. to 35,361 sq. ft.; and

WHEREAS, the additional space will be utilized as a locker room with a shower and sauna area; and

WHEREAS, the Board concludes that the proposed amendment does not affect the prior findings for the special permit; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on December 5, 2000, so that as amended this portion of the resolution shall read: "to permit an increase in floor area occupied by the PCE on the first floor *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received August 8, 2008'-(3) sheets; and *on further condition*:

THAT the floor area of the PCE post-enlargement shall not exceed 35,361 sq. ft.;

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

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

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

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

(DOB Application. No. 102690081)

Adopted by the Board of Standards and Appeals, November 25, 2008.

395-60-BZ

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

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

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

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

389-85-BZ

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

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

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

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Montanez.....1

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

239-97-BZ

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

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

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

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: K. H. Koons.

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

APPEALS CALENDAR

306-05-BZY
APPLICANT – Stuart A. Klein, Esq., for Manuel Scharf, owner.
SUBJECT – Application October 12, 2005 – Extension of Time to complete construction (§11-331) of a major/minor development under the prior Zoning District regulations.
PREMISES AFFECTED – 206A Beach 3rd Street, Block 15604, Lot 34, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Abrgail Patterson.
ACTION OF THE BOARD – Application denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson...4
Absent: Commissioner Montanez.....1
THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-331 to renew a building permit and extend the time for the completion of the foundations of five two-family attached dwellings, located on contiguous zoning lots; and

WHEREAS, a public hearing was held on this application on May 6, 2008 after due notice by publication in *The City Record*, with continued hearings on June 24, 2008, August 26, 2008, and October 28, 2008, and then to decision on November 25, 2008; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommends disapproval of the application; and

WHEREAS, the subject site consists of five adjacent lots (tentative Lots 31, 131, 32, 132 & and 34), located at the northeast corner of Seagirt Avenue and Beach 3rd Street; and

WHEREAS, the five lots are the result of a subdivision of a larger, pre-existing lot (formerly Lot 34); and

WHEREAS, each lot is 20 ft. wide by approximately 91 ft. deep; and

WHEREAS, each prospective zoning lot is proposed to be developed with a three-story, two-family attached dwelling (with the units side by side), a single garage and a single parking pad; and

WHEREAS, thus, on each zoning lot there will be two dwelling units, for a total of ten units over the entire proposed development (hereinafter, the "Proposed Development"); and

WHEREAS, on July 17, 2005, the applicant filed professionally-certified plans with the Department of Buildings; and

WHEREAS, five permits were issued on September 1, 2005 for the Proposed Development (NB Permit No. 402190883-01 for the building at 202 Beach 3rd Street; NB Permit No. 402190865-01 for the building at 204 Beach 3rd Street; NB Permit No. 402190847-01 for the building at 204A Beach 3rd Street; NB Permit No. 402190856-01 for the building at 206 Beach 3rd Street; and NB Permit No. 402190874-01 for the building at 206A Beach 3rd Street (the "Permits"); and

WHEREAS, when the Permits were issued and when construction commenced, the site was within an R5 zoning district; and

WHEREAS, the Proposed Development complied with the R5 zoning, because attached dwellings and the proposed amount of floor area and other bulk parameters were allowed; and

WHEREAS, however, on September 15, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to enact the Far Rockaway and Mott Creek rezoning proposal, which changed the site's zoning from R5 to R3X; and

WHEREAS, in R3X zoning districts, only detached single-family and two-family dwellings are allowed; as noted above, the Proposed Development contemplates attached two-family dwellings; and

WHEREAS, additionally, the Proposed Development would not comply with R3X district provisions regarding floor area and open space; and

WHEREAS, because the Proposed Development violates these provisions of the R3X zoning and work on foundations was not completed, the issued permits lapsed by operation of law; and

WHEREAS, additionally, the Department of Buildings issued a Revocation of Approval and Permit on October 10, 2008; and

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

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

WHEREAS, a threshold issue in this case is the proper categorization of the Proposed Development; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including "major development" and "minor development"; and

WHEREAS, major development includes construction

of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit, as evidenced by an approved site plan showing all of the buildings; and

WHEREAS, minor development includes construction of multiple non-conforming buildings on contiguous zoning lots, again, provided that it can be shown that the development was planned as a unit; and

WHEREAS, the applicant has submitted a DOB-approved site plan showing that the Proposed Development was planned as a unit; however, this does not establish whether it is a major or a minor development; and

WHEREAS, the applicant contends that the Proposed Development is a major development, noting that the five buildings would be non-complying as to the above-mentioned bulk parameters; and

WHEREAS, pursuant to ZR § 11-331, major developments may be vested upon a showing of progress on foundation construction for just one of the multiple buildings; and

WHEREAS, minor developments, however, may be vested only upon a showing of progress of foundation construction for each of the buildings; and

WHEREAS, a submission by DOB states that the Proposed Development is non-complying in terms of bulk, but also notes that that the Proposed Development contemplates attached homes, which are a non-conforming use in R3X zoning districts pursuant to ZR § 22-00; and

WHEREAS, ZR § 12-10 defines a "non-conforming use" as "any lawful use, whether of a building or other structure . . . which does not conform to any one or more of the applicable use regulations of the district in which it is located . . . A non-conforming use shall result from failure to conform to the applicable district regulations"; and

WHEREAS, accordingly, a failure to conform with the residential uses allowed in the R3X district (limited to single-family or two-family detached residences) renders the Proposed Development non-conforming by definition; and

WHEREAS, the Board observes that the ZR is structured so that use regulations are plainly distinguished and separated from bulk regulations; thus, the Board views the inclusion of provisions concerning residential building type (attached, semi-detached, detached) in the clearly delineated use regulations as an indication that they are to be treated as use regulations; and

WHEREAS, a submission by the General Counsel of the Department of City Planning ("DCP") concurs with DOB's determination that attached two-family homes in an area rezoned to R3X would constitute non-conforming uses under the Zoning Resolution; and

WHEREAS, the DCP General Counsel also cites to a letter to the Board dated October 8, 1996 from the former General Counsel of the DCP regarding BSA Cal. No. 160-96-A, a case seeking to vest a 96-unit development consisting of attached semi-attached and multiple family residential units in a district that was rezoned R3A (the "1996 Letter"), to illustrate the consistency of the department's position on the issue; and

WHEREAS, based on facts which mirror the instant case, the former DCP General Counsel stated that the attached, detached or semi-detached nature of a residence is a use distinction rather than a bulk distinction, as provided by §§ 22-00 and 22-12 of the Zoning Resolution which govern uses in residence districts; and

WHEREAS, the 1996 Letter also points out that the definition of "use" in ZR § 12-10 supports the determination that different housing types constitute different uses; and

WHEREAS, the DCP General Counsel further concurs with DOB that in a case where the development would be both nonconforming and non-complying, such as the instant case, the more restrictive vesting standard is applicable, and the development would be properly categorized as a minor development; and

WHEREAS, thus, the Board disagrees with the applicant that the attached homes of the Proposed Development are merely non-complying; rather, the Board also considers the proposed attached dwellings non-conforming uses under the R3X zoning; and

WHEREAS, thus, the Board finds that the Proposed Development meets the definition of a minor development, since it is non-complying as to bulk, and a major development, since it is non-conforming as to use; and

WHEREAS, as noted above, the standards for a right to continue construction are different for the two categories; and

WHEREAS, since the Proposed Development meets the definitions of both a "minor development" and a "major development," the Board must determine which definition's standard to apply; and

WHEREAS, the Board observes that the standard for a minor development is more restrictive, in that it requires a consideration of excavation and progress on foundations for all buildings, not just one; and

WHEREAS, ZR § 11-22 provides that when two ZR provisions set forth overlapping or contradictory regulations, "that provision which is more restrictive or imposes higher standards or requirements shall govern"; and

WHEREAS, thus, it is appropriate for the Board to require that the applicant meet the more stringent standard for minor development; that is, to show that excavation had been completed and substantial progress had been made on each of the foundations, not just one; and

WHEREAS, in BSA Cal. No. 144-05-BZY, which also involved an application to renew a building permit for a development of attached homes which were rendered non-complying and non-conforming by a rezoning, the Board similarly required the application to meet the standard for a minor development; and

WHEREAS, the Board therefore requested that the applicant revise the instant application to reflect that the Proposed Development is a minor development; and

WHEREAS, the applicant refused, and made various submissions purportedly supporting the classification of the Proposed Development as a major development; and

WHEREAS, the applicant argued that the Board's decisions in BSA Cal. No. 347-04-BZY and BSA Cal. No.

384-04-BZY, cases in which developments covering multiple lots were characterized as "major developments" determine that that the instant application should be evaluated as a major development; and

WHEREAS, the Board disagrees, noting that in each of the cited cases excavation was completed for the entire site and foundation work was performed over the entire site and, therefore, the analysis was based on the standard for a minor development, even if the respective development was mischaracterized as a "major development;" and

WHEREAS, the applicant additionally argues that ZR § 11-22 is inapplicable, asserting that the " 'use' relates merely to the purpose for which the building or structure is used or intended to be used" and as the intended "use" is as a two-family home, which is permitted within a R3X district, the use has not changed; and

WHEREAS, the Board notes that the use of the property for attached residences, is specifically not permitted by the use provisions ZR § 22-00 in an 3X district; and therefore, the proposed development is non-conforming as to use; and

WHEREAS, the Board further notes that the applicant misstates the holdings of a number of court decisions (see e.g., Farmers Bank of Fayetteville v. Hale, 14 Sickles 53 (N.Y. 1894); Wilcox v. Zing. Bd. of Apps of the City Yonkers (17 N.Y.2d 249 (1966); Nat'l Merritt, Inc. v. Weiss, 41 N.Y.2d 438 (1977)) to support a proposition that the legislative intent of the Zoning Resolution is to construe the use of the subject lots as two-family attached homes to be the same as the use of the property for two-family detached homes in the R3X district, notwithstanding specific language stating otherwise; and

WHEREAS, the Board further notes that the cases cited by the appellant fail to support a finding that the use provisions of the Zoning Resolution pertaining to R3X districts should be interpreted inconsistently with the plain meaning of the Zoning Resolution; based on the appellant's imputation of underlying legislative intent; and

WHEREAS, furthermore, such a finding would be inconsistent with the fundamental rule of statutory construction -- that statutory language that is clear and unambiguous must be construed to give effect to the plain meaning of the words used (see Raritan Development Corp. v. Silva, 91 N.Y.2d 98 (1997)); and

WHEREAS, in Raritan, the Court of Appeals held that the Board has no discretion to broaden the scope and application of a provision of the Zoning Resolution that is clear and unambiguous (id.); and

WHEREAS, the Board finds that ZR § 22-00 is a use provision that clearly limits the development of attached two-family homes in an R3X district; and

WHEREAS, the applicant summarily concluded that since the bulk provisions are violated, the application was appropriately categorized as a major development; and

WHEREAS, the Board does not accept the applicant's conclusion, since it has no basis in fact; and

WHEREAS, the Board finds that a provision that allows vesting upon a showing that progress has been made on just one foundation for a building in a multi-unit development constructed on contiguous zoning lots is inherently contradictory to a different provision that allows vesting only upon a showing that progress has been made on each foundation, where it can be shown that both provisions would apply based upon a development's non-conforming and non-complying status; and

WHEREAS, accordingly, the Board again requested that the application be revised to reflect that the Proposed Development is a minor development; and

WHEREAS, the applicant refused to revise the application to reflect this change; and

WHEREAS, since the Proposed Development is a minor development, the Board must find that excavation was completed and substantial progress was made over the entire development site and as to each required excavation and foundation; and

WHEREAS, the Board notes that the applicant does not refute that excavation and some foundation work was performed for only one building and that excavation was not complete for all buildings; and

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

WHEREAS, as noted above, pursuant to DOB's professional certification program, the owner pre-filed applications for New Building permits for the proposed development on July 17, 2005; and

WHEREAS, the Permits were subsequently obtained by the owner on September 1, 2005, and work commenced; and

WHEREAS, on September 9, 2005, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on non-compliance with the R5 zoning, as well as with the Zoning Resolution and Building Code based on certain objections identified by a special audit review1 (the "Notice of Intent"); and

WHEREAS, the applicant attended a meeting with a meeting with the Chief Plan Examiner, in response to the letter of intent to revoke, but failed to resolve the objections; and

WHEREAS, on October 10, 2008, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

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1 The DOB audit identified nine objections: "(1) Floor area ratio exceeded permitted as per ZR 12-141 (a) clarify mechanical room exemption required; (2) Building structure shall comply with earthquake code Local Law 17/95 – submit structural calculation as part of NB Application documentation; (3) Submit approved SDQ No. 646/05 3B Approved Drawing (a) drywall shall be located 10'-0" away from any foundation, (b) drywall shall not be located below water level; (4) Questionable storage room at first and second floor; (5) Party wall – fire division shall comply with BC 27-332/333; (6) Correction on PW1A required (a) zoning lot declaration, (b) Note as required by TPPN 1/2008 (c) penthouse shall be changed to third floor, (d) two unit only, not three."

WHEREAS, DOB states that the Permits were issued in error and were properly revoked due to the applicant's failure to resolve the building code and zoning objections cited in the September 9, 2005 Letter of Intent to Revoke; and

WHEREAS, at hearing, the applicant testified that all DOB objections had been satisfied, other than one regarding an audit by the Department of Environmental Conservation pertaining to forms submitted with the permit applications; and

WHEREAS, however, the applicant was unable to demonstrate to the Board that the objections were cured and that the Permits were valid; and

WHEREAS, indeed, in an affidavit submitted to the Board, the Chief Plan Examiner categorically states that at no point since the issuance of September 9, 2005 Letter of Intent to Revoke, had the applicant consulted with him regarding the objections to the plans, and the objections therefore remain intact; and

WHEREAS, it is well settled that vested rights cannot be acquired in reliance upon an invalid permit (see Matter of Natchev v. Klein, 41 N.Y.2d 834, 834 (1977); Jayne Estates v. Raynor, 22 N.Y.2d 417, 422 (1968);

WHEREAS, even where DOB erroneously issues a permit due to its own initial failure to notice that a builder's plans do not comply with provisions of the Zoning Resolution, no vested rights are acquired, since the permit could not have been validly granted in the first place (see Perrotta v. City of New York, 107 A.D.2d 320, 325 (1st Dep't) aff'd 66 N.Y.2d 859 (985) and GRA V, LLC v. Srinivasan, 862 N.Y.S.2d 358 (1st Dep't 2008)); and

WHEREAS, as stated by the Court in Perrotta, "[a] determination as to whether [a] petitioner had vested rights under [its] building permit must, of necessity, involve an examination of the validity of the permit, as well as compliance with technical provisions of the Zoning Resolution, and this is clearly an appropriate inquiry for agency expertise" (107 A.D.2d at 324); and

WHEREAS, accordingly, DOB has determined that the permit was invalid ab initio and the right to complete the work cannot have vested; and

WHEREAS, the Board agrees with DOB that any work performed cannot be considered for vesting purposes because the plans would not have complied with the zoning requirements and therefore no permits could be properly issued to permit the construction that was performed; and

WHEREAS, accordingly, because the permits were erroneously issued for a non-compliant building and were therefore invalid when issued, DOB rejects the Appellant's vesting claim; and

WHEREAS, the Board agrees with DOB and notes that New York State courts have consistently held that vested rights may only be granted for work performed pursuant to valid permits; and

WHEREAS, accordingly, the Board, through this resolution, denies the owner of the site the six-month extension for completion of construction that is allowed under ZR § 11-331; and

WHEREAS, as a final matter, the Board observes that the applicant, in a written submission, claims that the owner has established vested rights under the common law; and

WHEREAS, however, the applicant has not expanded upon this assertion nor provided any evidence in support of it; and

WHEREAS, additionally, the Board notes that the subject application was brought pursuant to ZR § 11-331; the issue of common law vesting was not discussed by the applicant at hearing, nor was a formal application made for the Board's consideration of such a claim, as required by Board practice; accordingly, the Board declines to render a determination as to this claim; and

Therefore it is Resolved that this application to renew NB Permit Nos. 402190883-01, 402190865-01, 402190847-01, 402190856-01 and 402190874-01 pursuant to ZR § 11-331 is denied.

Adopted by the Board of Standards and Appeals, November 25, 2008.

81-08-A

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5th Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Harvey Epstein.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:[1]

WHEREAS, the instant appeal comes before the Board in response to a determination of the Manhattan Borough Commissioner, dated March 6, 2008, to uphold the approval of Alteration Permit No. 104744877 permitting the enlargement of a five-story non-fireproof tenement building; and

WHEREAS, the Final Determination reads, in pertinent part:

> "[t]he Department has determined that the applicant's proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require

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

any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so.

Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unneccesary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.

. . . The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.

This shall be considered a Final Determination by the Department on . . . 514/516 East 6th Street, Manhattan;"

and

WHEREAS, this appeal was heard concurrently with a companion appeal under BSA Cal. No. 82-08-A, decided the date hereof, requesting a finding by the Board that the issuance of Alteration Permit No. 104744877 violated the New York State Multiple Dwelling Law and a revocation of the permit; and

WHEREAS, because the two appeals present the same issues of law and fact, in the interest of convenience, the Board heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this appeal on October 7, 2008, after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Jean Chin, a tenant of the subject premises (the "appellant"); and

WHEREAS, the appellant, the Department of Buildings ("DOB") and the owner of the subject buildings have been represented by counsel throughout this proceeding; and

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

WHEREAS, Council Member Rosie Mendez provided written and oral testimony in support of this appeal; and

WHEREAS, Manhattan Borough President Scott Stringer provided testimony in support of this appeal; and

WHEREAS, State Senator Thomas K. Duane and Assembly Majority Leader Sheldon Silver also provided testimony in support of this appeal; and

WHEREAS, representatives of the Association for Neighborhood and Housing Development. The Greenwich Village Society for Historic Preservation and the Good Old Lower East Side, Inc. also provided written and oral testimony in support of this appeal; and

THE SITE

WHEREAS, the subject site consists of two five-story "old-law" non-fireproof tenement buildings located on the south side of East 6th Street, between Avenue A and Avenue B which were constructed before 1901 (described interchangeably herein as the "Buildings" and the "subject buildings"); and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the enlargement of the Buildings; and

WHEREAS, on October 3, 2007, DOB issued Alteration Permit No. 104744877 (the "Permit") permitting a two-story vertical enlargement of the Buildings; and

WHEREAS, on October 26, 2007 and November 5, 2007, counsel for the appellant wrote the Manhattan Borough Commissioner requesting reconsideration of DOB's approval of the Permit based on the alleged violation of the Multiple Dwelling Law; and

WHEREAS, on March 6, 2008, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on April 4, 2008, the appellant filed the instant appeal at the BSA; and

ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the Permit for the subject buildings: (i) the Multiple Dwelling Law expressly prohibits enlargement of non-fireproof tenement buildings unless they are brought up to all applicable code requirements governing new construction; (ii) DOB lacked authorization to permit alternative safety upgrades in lieu of meeting requirements of the Multiple Dwelling Law; and

WHEREAS, these two arguments are addressed below; and

Requirements of Enlargement of Tenement Buildings

WHEREAS, the appellant contends the enlargement of the Buildings violates the fire protection measures of the Multiple Dwelling Law and therefore that the Permit should be revoked; and

WHEREAS, the appellant represents that that the Multiple Dwelling Law was enacted by the State Legislature in 1929 in part to provide fire protection to residents in New York City tenement buildings; and

WHEREAS, the appellant asserts that the enlargements of the Buildings is governed by MDL § 211, which prohibits the enlargement of any non-fireproof tenement to exceed a height of five stories; and

WHEREAS, the appellant states that MDL § 211 permits enlargements above five stories only in two circumstances: 1) a five-story old law tenement can be increased to six stories provided there is no increase in the height of the existing roof beams above curb level; and 2) any tenement can be enlarged to any height provided it meets all applicable requirements for comparable new fireproof construction under the MDL (see MDL § 3(11); and

WHEREAS, the appellant states pursuant to Local

Law 76 of 1968, the City Council adopted a new building code (the "Building Code") which included egress requirements for multiple dwellings; and

WHEREAS, the appellant further states that because these provisions, as well as others in the Building Code, exceed the minimum requirements set forth in the MDL, the State Legislature amended the MDL to specifically allow the Building Code to be applied, at the option of the property owner, to alterations affecting multiple dwellings (see MDL § 3 (11) MDL)); and

WHEREAS, the appellant states that § 27-120 of the Building Code incorporates the option afforded under the MDL; newly constructed multiple dwellings, as opposed to alterations to those existing in 1968, must comply with the City's stricter Building Code requirements; and

WHEREAS, the appellant contends that the enlargement of the subject buildings comply neither with the requirements of the MDL, nor with the stricter requirements of the Building Code, concerning fireproof construction, interior exit stairs, and elevators, among other deficiencies; and

WHEREAS, as defined by the MDL, the height of the subject buildings exceed six stories (see MDL § 4 (35) and (36)); and

WHEREAS, the appellant contends that the enlargement of the subject buildings above five stories triggers a requirement that the Buildings meet the MDL requirements for fireproof construction (MDL § 3(11)); and

WHEREAS, the appellants further contend that these requirements mandate that the floors and roof be made of non-combustible materials of one and one-half hour fire resistive rating (see MDL § 4(25); and

WHEREAS, it is undisputed that the Buildings do not meet this standard; and

WHEREAS, with respect to interior exit stairs, the Appellant states that the MDL requires interior exit stairs in fireproof buildings to be enclosed in noncombustible three-hour fire-rated walls (MDL §§ 102, 148); and

WHEREAS, the appellant represents that the approved assembly for three-hour fire-rated partitions is comprised of two layers of fire-rated sheetrock on both sides of 3-5/8" metal studs; and

WHEREAS, the appellant contends that the existing stair enclosures are comprised of plaster and wood lath on wood studs which is laminated only on the stair-side with fire-rated sheetrock; and

WHEREAS, the appellant further contends that fire-retarding a single side of an interior stair is not acceptable under the MDL for a two-story multiple dwelling, much less a seven story one (see MDL § 148 (3)); and

WHEREAS, the appellant argues that that the width of the staircase in 514 East 6th Street also violates the MDL; and

WHEREAS, the MDL requires interior exit stairs to be at least 36 inches in clear width (see MDL § 231(2)) and the appellant represents that the existing stair serving 514 East 6th Street is only 31 inches in width; and

WHEREAS, the appellant states that the MDL provides that apartment entry doors may not open directly onto an exit stair to prevent the egress stair from filling up with smoke in the event of a fire inside an apartment where the apartment entry door is left open (see MDL §148); and

WHEREAS, the appellant contends that DOB approved an enlargement of the subject buildings despite the fact that the apartment entry doors open directly onto an exit stair; and

WHEREAS, DOB states that the sprinklering of the Buildings is an effective substitute for the requirements of MDL § 148; and

WHEREAS, the appellant asserts that the sprinklering of the Buildings would be ineffective to remediate a smoke condition, and that doing so would therefore not provide an equivalent level of protection and therefore would fail to be an acceptable substitute for the statutory requirement; and .

WHEREAS, the appellant argues that at more than six stories and 60 feet in height, the subject buildings also do not comply with the MDL requirements for elevator accessibility; and

WHEREAS, under the MDL, each building must be equipped with a passenger elevator accessible to every apartment above the entrance story and an elevator is required for any building exceeding four stories (see MDL § 51(6)); and

WHEREAS, the appellant states that the subject buildings have no elevators; and

WHEREAS, DOB argues that the Appellant's claim that elevators are required because the Buildings exceed six stories and 60 feet in height is incorrect, because longstanding DOB policy applies Building Code § 27-306 for the purposes of defining height limits; and

WHEREAS, if Building Code § 27-306 were applied to the Buildings, the seventh floor penthouses would not be included within the height or number of stories and, at a resulting six stories and less than 60 feet, the elevators would not be required; and

WHEREAS, however, as an interpretation of a provision of the MDL is at issue, the MDL definitions of height and number of stories must be applied;

WHEREAS, as stated above, under the MDL, the height of the subject buildings exceeds six stories and 60 feet (see MDL § 4 (35) and (36)); therefore elevators would be required; and

WHEREAS, the appellant contends that the aforementioned non-compliances as to fireproof construction, interior exit stairs, and elevators constitute a sampling of the deficiencies in MDL compliance by the subject buildings; and

WHEREAS, it is undisputed by DOB and the owner that the MDL requires fire safety upgrades in conjunction with the enlargement of tenement buildings; and

Authorization to Vary the Application of the MDL

WHEREAS, the appellant contends that DOB lacked authority to approve the enlargement of the subject buildings because of their non-compliance with the fire safety measures required by the MDL in conjunction with such enlargements; and

WHEREAS, the DOB states that the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and

represents that the design for the subject buildings upgraded the level of fire protection to a level at least equivalent to the standard required by the MDL (see February 1, 2008 letter from Deputy Commissioner Fatma M. Amer, P.E., to Council Member Mendez), but

WHEREAS, in her February 1, 2008 letter, Deputy Commissioner Amer also stated that "the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties that would be caused in this particular case by the compliance with the strict letter of the MDL provisions"; and

WHEREAS, in a submission to the Board, DOB states that strict compliance with the fire safety upgrades required by the MDL would make it virtually impossible for tenements such as the Buildings to be enlarged; and

WHEREAS, DOB represents that unless enlargement of such buildings were permitted in the manner implemented by DOB, increased fire safety measures would not be imposed, and

WHEREAS, DOB states that the fire safety upgrades which include: (i) sprinklering of the Buildings; (ii) installation of hard-wired smoke detectors in all apartments; (iii) increased fire-resistive rating of the stair and entrance hall walls and cellar ceilings; and (iv) the construction of fire passages in the rear yards (collectively, the "alternative safety measures") are an effective alternative method of fire safety improvement that increase the safety of tenement residents; and

WHEREAS, Board acknowledges that the intent of the alternative safety measures was to ensure that tenement residents were better protected against fire than would be possible absent the enlargement of the Buildings; and

WHEREAS, the appellant asserts that by approving alterations that were inconsistent with the MDL, and with the alternative framework of the Building Code, DOB was in effect granting a variance from the strict requirements of the MDL; and

WHEREAS, the appellant argues that DOB lacks authority to vary the application of the MDL; and

WHEREAS, the appellant states that DOB is required by the MDL to enforce its provisions (MDL § 303 (1)) and cannot refuse to do so or adopt new exceptions, and that Section 643 of the City Charter additionally provides that the Department "shall enforce" the provisions of the MDL, among other statutes; and

WHEREAS, the Appellant further states that the NYC Charter provides that the Commissioner of DOB "shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein" (NYC Charter § 645); and

WHEREAS, the appellant contends that the term "shall" used in the above-referenced statutes is mandatory, not optional, and does not allow DOB any latitude in its enforcement of the MDL; and

WHEREAS, the appellant points out that DOB is expressly granted the power to vary MDL requirements only with respect to loft dwellings (see MDL Article 7-b); and

WHEREAS, the appellant states that MDL instead vests the Board with the power to grant relief to the "strict letter" of its requirements (MDL § 310 (2)); and

WHEREAS, the appellant concludes that, other than with respect to loft dwellings, only the Board is empowered to grant variances to the strict letter of the MDL, and that variances granted by DOB would exceed its authority under the law; and

WHEREAS, the appellant further states that permitting an alternative scheme of fire protection also amounts to an attempt to legislate by DOB, without undergoing a formal rulemaking process, and points out that when the Council adopted the Building Code, the NYS Legislature made conforming amendments to the MDL to specifically allow the City's code to be applied instead; and

WHEREAS, the Board notes that DOB has not provided statutory or legal authority supporting its authority to waive the MDL; and

WHEREAS, a submission by the owner argues that DOB has the ability to disregard the contested provisions of the MDL under its reserved police powers; and

WHEREAS, the Board disagrees that these provision allow DOB to enforce the MDL in a manner other than as prescribed, because they empower a City or town to make local laws, ordinances, resolutions or regulations concerning matters within the province of the MDL; and

WHEREAS, such a provision would not apply to the instant appeal because the alternative safety measures in question are not the subject of a local law, ordinance, resolution or regulation expressly permitting their implementation; and

WHEREAS, the Board further notes that MDL § 3 (7) expressly prohibits any local law, ordinance, rule or regulation from modifying or dispensing with any provision of the MDL; and

WHEREAS, the owner also argues that the alternative fire safety measures are not necessarily invalid, simply because they are not identical to the MDL, citing Schilhaus v. Gilroy (22 Misc. 2d 524 (Sup. Ct. 1959)), Dankner v. City of New York (cite) and Matter of Sacer Realty Corp. (73 N.Y.S. 2d 211 (Qns. Sup. Ct. 1947)) in support; and

WHEREAS, the Board notes that the afore-mentioned cases provide support for the proposition that a municipality can impose more restrictive measures to protect public health and safety and are therefore irrelevant to the question of whether DOB can adopt alternative safety measures that are not alleged to be more restrictive than the MDL; and

WHEREAS, the Board finds that MDL § 211 requires the enlargement of the subject buildings to comply with the MDL provisions governing fireproof buildings and that the alternative safety measures are inconsistent with the requirements of the MDL for fireproof buildings; and

WHEREAS, in the absence of stated authority for the approval of the alternative safety measures, the Board further finds that the Permit for the enlargement of the subject buildings was invalidly issued; and

Authorization of the Board to Grant the Appeal

WHEREAS, the owner argues that the Board does not have authority to decide this appeal, citing decisions in

Cherry v. Brumbaugh (255 A.D. 880 (2d Dep't 1938)); Downey v. Vill. of Kensington (257 N.Y. 331 (1931)), and Levy v. Bd. of Stds. and Apps., 267 N.Y. 347 (1935)); and

WHEREAS, however, none of the cited cases support the owner's contention; the Cherry and Downey cases, inasmuch as they deal with issues concerning the constitutionality of zoning resolutions, are entirely inapposite to the question of the BSA's authority to hear appeals of DOB decisions and the Levy case actually supports the appellant's position that legislation is required to implement the alternative safety measures; and

WHEREAS, the Board's authority to hear the instant appeal is clearly conferred by Sections 648 and 666(6)(a) of the New York City Charter; and

WHEREAS, further, the Board concludes that it has the power to determine whether DOB was authorized to approve fire safety measures that were inconsistent with the requirements of the MDL; and

Providing Relief to the Owner

WHEREAS, the owner argues that if the law and facts dictate an approval of the instant appeal, the Board should nonetheless deny it and re-open the hearing to take evidence of the Owner's own hardship appeal; and

WHEREAS, the owner, argues that the Board should, within the context of the instant appeal, exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that addresses the Owner's "practical difficulties and or unnecessary hardship" in strictly complying with the MDL; and

WHEREAS, the Board notes that City Charter § 666(7) provides authority for it to hear an appeal concerning the application of the MDL; however, Section 1-07 of the Board's Rules of Practice and Procedure sets forth certain procedural and notification requirements necessary before the Board can act, including the filing of a formal application; and

WHEREAS, the owner has not met these requirements; and

WHEREAS, the owner states that decisions by the Board respecting applications filed as BSA Cal. Nos. 330-03-A, 132-03-A and 174-05-A provide precedent for it to seek and obtain relief in the instant appeal; and

WHEREAS, the Board disagrees that the cited resolutions provide a basis for the owner to seek and obtain relief in the instant appeal: in BSA Cal. No. 330-03-A and BSA Cal. No. 132-03-A, the Board acted on requests by applicants pursuant to Section 666 of the Charter, rather than on a request by a third party, such as the owner in the instant appeal; and in BSA Cal. No. 174-05-A, on the record presented, the Board modified a variance previously granted by DOB pursuant to Building Code § 27-107 that was within the authority of the agency; in the latter case, as with the two former cases, the Board was acting on an application before it, not in response to a request interposed by a third party seeking relief pursuant to an application filed by an unrelated party; and

WHEREAS, alternatively, the Owner also argues that if the law and facts dictate a grant of the instant appeal, that the Board has the jurisdiction to fashion relief so as to make its rule prospective only and to not revoke the Permit of the subject buildings; and

WHEREAS, the Board does not have the authority to simultaneously determine that the Permit for the enlargement of the Buildings was issued without authorization, and then to ignore that fundamental fact; and

WHEREAS, the Board finds that: (i) the proposed enlargement of the subject buildings under Alteration Permit No. 104744877 must meet the requirements of Multiple Dwelling Law for fireproof construction; (ii) the proposed enlargement of the Buildings does not comply with the requirements of the Multiple Dwelling Law for fireproof construction; and (iii) as DOB has not provided any evidence of statutory or legal authority to approve alternative safety measures, the enlargement must meet the requirement of the MDL for fire proof construction

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated March 6, 2008, and a revocation of Alteration Permit No. 104744877, is hereby granted; and

Adopted by the Board of Standards and Appeals, November 25, 2008.

82-08-A

APPLICANT – Harvey Epstein, Esq., for 514-516 East 5th Street, LLC, owner.

SUBJECT – Application April 4, 2008 – Appeal seeking to revoke permit and approvals for a vertical enlargement of an existing non- fireproof tenement building which fails to comply with the applicable provisions of the MDL regarding fire safety standards. R7-2 zoning district.

PREMISES AFFECTED – 515 East 5th Street, between A and Avenue B, Block 401, Lot 17, 18 & 56, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Harvey Epstein.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:[1]

WHEREAS, the instant appeal comes before the Board in response to a determination of the Manhattan Borough Commissioner, dated March 6, 2008, to uphold the approval of Alteration Permit No.104368845 permitting the enlargement of a five-story non-fireproof tenement building; and

WHEREAS, the Final Determination reads, in pertinent part:

"[t]he Department has determined that the

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

applicant's proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so.

Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unneccesary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.

. . . The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.

This shall be considered a Final Determination by the Department on 515 East 5th Street . . ., Manhattan;"

and

WHEREAS, this appeal was heard concurrently with a companion appeal under BSA Cal. No. 81-08-A, decided the date hereof, requesting a finding by the Board that the issuance of Alteration Permit No.104368845 violated the New York State Multiple Dwelling Law and a revocation of the permit; and

WHEREAS, because the two appeals present the same issues of law and fact, in the interest of convenience, the Board heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this appeal on October 7, 2008, after due notice by publication in the *City Record*, and then to decision on November 25, 2008; and

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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Monte Shapiro, Sharon Jane Smith, Alice Baldwin and Joseph Lubaszka, tenants of the subject premises (the "appellant"); and

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

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

WHEREAS, Council Member Rosie Mendez provided written and oral testimony in support of this appeal; and

WHEREAS, Manhattan Borough President Scott Stringer provided testimony in support of this appeal; and

WHEREAS, State Senator Thomas K. Duane and Assembly Majority Leader Sheldon Silver also provided testimony in support of this appeal; and

WHEREAS, representatives of the Association for Neighborhood and Housing Development, the Greenwich Village Society for Historic Preservation, and the Good Old Lower East Side, Inc. also provided written and oral testimony in support of this appeal; and

WHEREAS, the owner of 515 East 5th Street (the "owner") provided written and oral testimony in opposition to this appeal; and

THE SITE

WHEREAS, the subject site consists of a five-story "old-law" non-fireproof tenement building located on the north side of East 5th Street, between Avenue A and Avenue B which was constructed before 1901 (described interchangeably herein as the "Building" and the "subject building"); and

PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the enlargement of a five-story non-fireproof tenement building (the "Building") built prior to 1901; and

WHEREAS, on March 7, 2006, pursuant to its professional certification program, DOB issued Alteration Permit No. 104368845 permitting a two-story vertical enlargement of the Building; and

WHEREAS, at the request of City Council Member Mendez and other government officials, DOB conducted a special audit review of the Permit in May, 2006, and certain objections were raised; and

WHEREAS, according to the appellant, in response to these issues, the owner filed a second permit application seeking to sprinkler the Building; and

WHEREAS, the appellant further states that in response to a request for reconsideration submitted by certain elected officials, DOB conducted a second special audit review which identified a number of violations of the Multiple Dwelling Law; and

WHEREAS, the complainants also questioned whether the enlargement complied with ZR § 23-692, known as the "Sliver Law"; and

WHEREAS, in February 2007, DOB issued a final determination with respect to the Sliver Law issue; an appeal to the Board followed under BSA Cal. No. 67-07-A which was granted on September 11, 2007; and

WHEREAS, on March 6, 2008, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on April 4, 2008, the appellant filed the instant appeal at the BSA; and

ISSUES PRESENTED

WHEREAS, the appellant makes the following primary arguments in support of its position that DOB should revoke the Permit for the subject building: (i) the Multiple Dwelling Law expressly prohibits enlargement of non-fireproof tenement buildings unless they are brought up to all applicable code requirements governing new construction; (ii) DOB lacked authorization to permit alternative safety upgrades in lieu of

meeting requirements of the Multiple Dwelling Law; and

WHEREAS, these two arguments are addressed below; and

Requirements of Enlargement of Tenement Buildings

WHEREAS, the appellant contends the enlargement of the Building violates the fire protection measures of the Multiple Dwelling Law and therefore that the Permit should be revoked; and

WHEREAS, the appellant represents that that the Multiple Dwelling Law was enacted by the State legislature in 1929 in part to provide fire protection to residents in New York City tenement buildings; and

WHEREAS, the appellant asserts that the enlargements of the Building is governed by MDL § 211, which prohibits the enlargement of any non-fireproof tenement to exceed a height of five stories; and

WHEREAS, the appellant states that MDL § 211 permits enlargements above five stories only in two circumstances: 1) a five-story old law tenement can be increased to six stories provided there is no increase in the height of the existing roof beams above curb level; and 2) any tenement can be enlarged to any height provided it meets all applicable requirements for comparable new fireproof construction under the MDL (see MDL § 3(11); and

WHEREAS, the appellant states pursuant to Local Law 76 of 1968, the City Council adopted a new building code (the "Building Code") which included egress requirements for multiple dwellings; and

WHEREAS, the appellant further states that because these provisions, as well as others in the Building Code, exceed the minimum requirements set forth in the MDL, the State Legislature amended the MDL to specifically allow the Building Code to be applied, at the option of the property owner, to alterations affecting multiple dwellings (see MDL § 3 (11) MDL)); and

WHEREAS, the appellant states that § 27-120 of the Building Code incorporates the option afforded under the MDL; newly constructed multiple dwellings, as opposed to alterations to those existing in 1968, must comply with the City's stricter Building Code requirements; and

WHEREAS, the appellant contends that the enlargement of the subject building complies neither with the requirements of the MDL, nor with the stricter requirements of the Building Code, concerning fireproof construction, interior exit stairs, and elevators, among other deficiencies; and

WHEREAS, as defined by the MDL, the height of the subject building exceeds six stories (see MDL § 4 (35) and (36)); and

WHEREAS, the appellant contends that the enlargement of the subject building above five stories triggers a requirement that the Building meet the MDL requirements for fireproof construction (MDL § 3(11)); and

WHEREAS, the appellants further contend that these requirements mandate that the floors and roof be made of non-combustible materials of one and one-half hour fire resistive rating (see MDL § 4(25); and

WHEREAS, it is undisputed that the Building does not meet this standard; and

WHEREAS, with respect to interior exit stairs, the Appellant states that the MDL requires interior exit stairs in fireproof buildings to be enclosed in noncombustible three-hour fire-rated walls (MDL §§ 102, 148); and

WHEREAS, the appellant represents that the approved assembly for three-hour fire-rated partitions is comprised of two layers of fire-rated sheetrock on both sides of 3-5/8" metal studs; and

WHEREAS, the appellant contends that the existing stair enclosures are comprised of plaster and wood lath on wood studs which is laminated only on the stair-side with fire-rated sheetrock; and

WHEREAS, the appellant further contends that fire-retarding a single side of an interior stair is not acceptable under the MDL for a two-story multiple dwelling, much less a seven story one (see MDL § 148 (3)); and

WHEREAS, the appellant states that the MDL provides that apartment entry doors may not open directly onto an exit stair to prevent the egress stair from filling up with smoke in the event of a fire inside an apartment where the apartment entry door is left open (see MDL §148); and

WHEREAS, the appellant contends that DOB approved an enlargement of the subject building despite the fact that the apartment entry doors open directly onto an exit stair; and

WHEREAS, DOB states that the sprinklering of the Building is an effective substitute for the requirements of MDL § 148; and

WHEREAS, the appellant asserts that the sprinklering of the Building would be ineffective to remediate a smoke condition, and that doing so would therefore not provide an equivalent level of protection and therefore would fail to be an acceptable substitute for the statutory requirement; and .

WHEREAS, the appellant argues that at more than six stories and 60 feet in height, the subject building also does not comply with the MDL requirements for elevator accessibility; and

WHEREAS, under the MDL, each building must be equipped with a passenger elevator accessible to every apartment above the entrance story and an elevator is required for any building exceeding four stories (see MDL § 51(6)); and

WHEREAS, the appellant states that the subject building has no elevator; and

WHEREAS, DOB argues that the Appellant's claim that an elevator is required because the Building exceeds six stories and 60 feet in height is incorrect, because longstanding DOB policy applies Building Code § 27-306 for the purposes of defining height limits; and

WHEREAS, if Building Code § 27-306 were applied to the Building, the seventh floor penthouse would not be included within the height or number of stories and, at a resulting six stories and less than 60 feet, an elevator would not be required; and

WHEREAS, however, as an interpretation of a provision of the MDL is at issue, the MDL definitions of height and number of stories must be applied;

WHEREAS, as stated above, under the MDL, the height of the subject building exceeds six stories and 60 feet (see

MDL § 4 (35) and (36)); therefore an elevator would be required; and

WHEREAS, the appellant contends that the aforementioned non-compliances as to fireproof construction, interior exit stairs, and elevators constitute a sampling of the deficiencies in MDL compliance by the subject building; and

WHEREAS, it is undisputed by DOB and the owner that the MDL requires fire safety upgrades in conjunction with the enlargement of tenement buildings; and

Authorization to Vary the Application of the MDL

WHEREAS, the appellant contends that DOB lacked authority to approve the enlargement of the subject building because of non-compliance with the fire safety measures required by the MDL in conjunction with such enlargement; and

WHEREAS, the DOB states that the MDL was enacted in 1929, prior to the widespread use of sprinklers and other advancements in construction materials and represents that the design for the subject building upgraded the level of fire protection to a level at least equivalent to the standard required by the MDL (see February 1, 2008 letter from Deputy Commissioner Fatma M. Amer. P.E., to Council Member Mendez), but

WHEREAS, in her February 1, 2008 letter, Deputy Commissioner Amer also stated that "the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties that would be caused in this particular case by the compliance with the strict letter of the MDL provisions"; and

WHEREAS, in a submission to the Board, DOB states that strict compliance with the fire safety upgrades required by the MDL would make it virtually impossible for tenements such as the Building to be enlarged; and

WHEREAS, DOB represents that unless enlargement of such buildings were permitted in the manner implemented by DOB, increased fire safety measures would not be imposed, and

WHEREAS, DOB states that the fire safety upgrades which include: (i) sprinklering of the Building; (ii) installation of hard-wired smoke detectors in all apartments; (iii) increased fire-resistive rating of the stair and entrance hall walls and cellar ceilings; and (iv) the construction of fire passages in the rear yards (collectively, the "alternative safety measures") are an effective alternative method of fire safety improvement that increase the safety of tenement residents; and

WHEREAS, Board acknowledges that the intent of the alternative safety measures was to ensure that tenement residents were better protected against fire than would be possible absent the enlargement of the Building; and

WHEREAS, the appellant asserts that by approving alterations that were inconsistent with the MDL, and with the alternative framework of the Building Code, DOB was in effect granting a variance from the strict requirements of the MDL; and

WHEREAS, the appellant argues that DOB lacks authority to vary the application of the MDL; and

WHEREAS, the appellant states that DOB is required by the MDL to enforce its provisions (MDL § 303 (1)) and cannot refuse to do so or adopt new exceptions, and that Section 643 of the City Charter additionally provides that the Department "shall enforce" the provisions of the MDL, among other statutes; and

WHEREAS, the Appellant further states that the NYC Charter provides that the Commissioner of DOB "shall have no power to allow any variance from the provisions of any law in any respect except as expressly allowed therein" (NYC Charter § 645); and

WHEREAS, the appellant contends that the term "shall" used in the above-referenced statutes is mandatory, not optional, and does not allow DOB any latitude in its enforcement of the MDL; and

WHEREAS, the appellant points out that DOB is expressly granted the power to vary MDL requirements only with respect to loft dwellings (see MDL Article 7-b); and

WHEREAS, the appellant states that MDL instead vests the Board with the power to grant relief to the "strict letter" of its requirements (MDL § 310 (2)); and

WHEREAS, the appellant concludes that, other than with respect to loft dwellings, only the Board is empowered to grant variances to the strict letter of the MDL, and that variances granted by DOB would exceed its authority under the law; and

WHEREAS, the appellant further states that permitting an alternative scheme of fire protection also amounts to an attempt to legislate by DOB without undergoing a formal rulemaking process, and points out that when the Council adopted the Building Code, the NYS Legislature made conforming amendments to the MDL to specifically allow the City's code to be applied instead; and

WHEREAS, the Board notes that DOB has not provided statutory or legal authority supporting its authority to waive the MDL; and

WHEREAS, a submission by the owner argues that DOB has the ability to disregard the contested provisions of the MDL under its reserved police powers; and

WHEREAS, the Board disagrees that these provision allow DOB to enforce the MDL in a manner other than as prescribed, because they empower a City or town to make local laws, ordinances, resolutions or regulations concerning matters within the province of the MDL; and

WHEREAS, such a provision would not apply to the instant appeal because the alternative safety measures in question are not the subject of a local law, ordinance, resolution or regulation expressly permitting their implementation; and

WHEREAS, the Board further notes that MDL § 3 (7) expressly prohibits any local law, ordinance, rule or regulation from modifying or dispensing with any provision of the MDL; and

WHEREAS, the owner also argues that the alternative fire safety measures are not necessarily invalid, simply because they are not identical to the MDL, citing Schilhaus v. Gilroy (22 Misc. 2d 524 (Sup. Ct. 1959)), Dankner v. City of New York (cite) and Matter of Sacer Realty Corp. (73 N.Y.S. 2d 211 (Qns. Sup. Ct. 1947)) in support; and

WHEREAS, the Board notes that the afore-mentioned cases provide support for the proposition that a municipality can impose more restrictive measures to protect public health and safety and are therefore irrelevant to the question of whether DOB can adopt alternative safety measures that are not alleged to be more restrictive than the MDL; and

WHEREAS, the Board finds that MDL § 211 requires the enlargement of the subject building to comply with the MDL provisions governing fireproof buildings and that the alternative safety measures are inconsistent with the requirements of the MDL for fireproof buildings; and

WHEREAS, in the absence of stated authority for the approval of the alternative safety measures, the Board further finds that the Permit for the enlargement of the subject building was invalidly issued; and

Authorization of the Board to Grant the Appeal

WHEREAS, the owner argues that the Board does not have authority to decide this appeal, citing decisions in Cherry v. Brumbaugh (255 A.D. 880 (2d Dep't 1938)); Downey v. Vill. of Kensington (257 N.Y. 331 (1931)), and Levy v. Bd. of Stds. and Apps., 267 N.Y. 347 (1935)); and

WHEREAS, however, none of the cited cases support the owner's contention; the Cherry and Downey cases, inasmuch as they deal with issues concerning the constitutionality of zoning resolutions, are entirely inapposite to the question of the BSA's authority to hear appeals of DOB decisions and the Levy case actually supports the appellant's position that legislation is required to implement the alternative safety measures; and

WHEREAS, the Board's authority to hear the instant appeal is clearly conferred by Sections 648 and 666(6)(a) of the New York City Charter; and

WHEREAS, further, the Board concludes that it has the power to determine whether DOB was authorized to approve fire safety measures that were inconsistent with the requirements of the MDL; and

Providing Relief to the Owner

WHEREAS, the owner argues that if the law and facts dictate an approval of the instant appeal, the Board should nonetheless deny it and re-open the hearing to take evidence of the Owner's own hardship appeal; and

WHEREAS, the owner, argues that the Board should, within the context of the instant appeal, exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that addresses the Owner's "practical difficulties and or unnecessary hardship" in strictly complying with the MDL; and

WHEREAS, the Board notes that City Charter § 666(7) provides authority for it to hear an appeal concerning the application of the MDL; however, Section 1-07 of the Board's Rules of Practice and Procedure sets forth certain procedural and notification requirements necessary before the Board can act, including the filing of a formal application; and

WHEREAS, the owner has not met these requirements; and

WHEREAS, the owner states that decisions by the Board respecting applications filed as BSA Cal. Nos. 330-03-A, 132-03-A and 174-05-A provide precedent for it to seek and obtain relief in the instant appeal; and

WHEREAS, the Board disagrees that the cited resolutions provide a basis for the owner to seek and obtain relief in the instant appeal: in BSA Cal. No. 330-03-A and BSA Cal. No. 132-03-A, the Board acted on requests by applicants pursuant to Section 666 of the Charter, rather than on a request by a third party, such as the owner in the instant appeal; and in BSA Cal. No. 174-05-A, on the record presented, the Board modified a variance previously granted by DOB pursuant to Building Code § 27-107 that was within the authority of the agency; in the latter case, as with the two former cases, the Board was acting on an application before it, not in response to a request interposed by a third party seeking relief pursuant to an application filed by an unrelated party; and

WHEREAS, alternatively, the Owner also argues that if the law and facts dictate a grant of the instant appeal, that the Board has the jurisdiction to fashion relief so as to make its rule prospective only and to not revoke the Permit of the subject building; and

WHEREAS, the Board does not have the authority to simultaneously determine that the Permit for the enlargement of the Building was issued without authorization, and then to ignore that fundamental fact; and

WHEREAS, the Board finds that: (i) the proposed enlargement of the subject building under Alteration Permit No. 104368845 must meet the requirements of Multiple Dwelling Law for fireproof construction; (ii) the proposed enlargement of the Building does not comply with the requirements of the Multiple Dwelling Law for fireproof construction; and (iii) as DOB has not provided any evidence of statutory or legal authority to approve alternative safety measures, the enlargement must meet the requirement of the MDL for fireproof construction.

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated March 6, 2008, and a revocation of Alteration Permit No. 1104368845, is hereby granted; and

Adopted by the Board of Standards and Appeals, November 25, 2008.

164-08-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated June 10, 2008, acting on Department of Buildings Application No. 410078632 reads, in pertinent part:

A-1 The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 23, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 8, 2008, the Department of Environmental Protection ("DEP") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 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 June 10, 2008, acting on Department of Buildings Application No. 410078632, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received July 1, 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, November 25, 2008.

174-08-A
APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lydia & Cosmo Lenaro, owners.
SUBJECT – Application July 1, 2008 – Proposed reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street. R4 zoning district.
PREMISES AFFECTED – 617 Bayside Drive, partially in the southeast corner of the intersection of mapped Bayside Drive and Beach 202nd Street, Block 16350, Lot p/o 300, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Gary Lenhart.
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.....4
Negative:.....0
Absent: Commissioner Montanez.....1
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated June 20, 2008, acting on Department of Buildings Application No. 410094785 reads, in pertinent part:

A-1 The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 22, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 29, 2008, the Department of Environmental Protection ("DEP") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 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 June 20, 2008, acting on Department of Buildings Application No. 410094785, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received July 1, 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, November 25, 2008.

192-08-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated July 8, 2008, acting on Department of Buildings Application No. 410119312 reads, in pertinent part: For the Board of Standards and Appeals Only:

A-1 - The proposed enlargement is on a site where the building and lot are located partially in the bed of a mapped street therefore no Certificate of Occupancy can be issued as per Art. 3, Section 35 of the General City Law; and

A-2 - The street giving access to the existing building altered is not duly placed on the map of the City of New York.

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

B) Existing dwelling altered does not have at least 8% of the total perimeter of the building fronting space, contrary to Section 27-291 of the Administrative Code.

A-3 - The proposed upgrade of the private disposal system is contrary to the Department of Building policy;" and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated July 28, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 11, 2008, the Department of Environmental Protection ("DEP") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 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 July 8, 2008, acting on Department of Buildings Application No. 410119312 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 July 15 , 2008 " – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

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, November 25, 2008.

202-08-BZY

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

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

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

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331 to renew a building permit and extend the time for the completion of the foundation of a seven-story residential building; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 212-08-A, decided the date hereof, which is a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience, the cases were heard together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 24, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

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

WHEREAS, Community Board 6, Brooklyn recommends disapproval of this application; and

WHEREAS, a representative of Assemblywoman Joan L. Millman testified in opposition to this application; and

WHEREAS, several community residents testified in favor of this application; and

WHEREAS, certain community residents also opposed this application, including members of the Carroll Gardens Neighborhood Association, Inc., and the Carroll Gardens Coalition for Respectful Development, (collectively, the "Opposition"); and

WHEREAS, specifically, the Opposition raised the following concerns: (1) the permit is invalid; (2) the excavation was not complete; and (3) substantial progress on the foundation was not complete; and

WHEREAS, the subject site is located at the northwest corner of Second Place and Smith Street in the Carroll Gardens neighborhood of Brooklyn; and

WHEREAS, the site has a frontage of approximately 82.5 feet on Smith Street and 115 feet on Second Place; the Zoning Lot has a total lot area of 23,023 sq. ft.; and

WHEREAS, the site shares the Zoning Lot with a two-story school/day care facility located at 342 Smith Street; the subject site occupies approximately 9,400 sq. ft. of the Zoning Lot area; and

WHEREAS, the site is proposed to be developed with a seven-story 48-unit residential building (the "Building"), with a total floor area of 61,031 sq. ft. (2.7 FAR); and

WHEREAS, the subject site is located on a "Place Street" which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district; and

WHEREAS, the subject site is subject to an easement in favor of the Transit Authority for a subway entrance, and contains subway structures at or near grade and a subway line below grade; and

WHEREAS, on February 22, 2008, New Building Permit No. 302290777-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, revised structural plans were approved on April 15, 2008 and revised architectural plans were approved on May 5, 2008; the Owner commenced construction of the foundation on April 15, 2008; and

WHEREAS, when the Permit was issued, Second Place was a "wide street" under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19th century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment, which redefined Second Place as a "narrow street;" and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 2.7 (a maximum FAR of 3.0 is permitted), a floor area of 61,031 sq. ft., a street wall height of 66 feet, and a total building height of 70 feet; and

WHEREAS, because the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2, a maximum residential floor area of 43,631 (because of envelope restrictions), a streetwall height of 45 feet, and a maximum building height of 55 feet; and

WHEREAS, because the Building violates these limitations on development fronting on a narrow street and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008 for the Permit; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior R6 zoning as applied to a wide street; and

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

renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that "[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;" and

WHEREAS, the record indicates that the Permit was issued to the owner by DOB on February 22, 2008 authorizing construction of the proposed Building; and

WHEREAS, at hearing, the Opposition contested the validity of the Permit based on two issues: (i) the alleged non-compliance of the outer court; and (ii) an alleged discrepancy in the zoning lot description; and

WHEREAS, the Opposition contends that the proportions of the outer court of a one-story permitted obstruction in the rear yard of the building do not comply with ZR § 23-841; therefore, that the permit is invalid; and

WHEREAS, further, the Opposition contends that there is a discrepancy between the Zoning Lot Description approved by DOB for the Permit application which was recorded with the Office of the City Register on April 11, 2007 and the Zoning Lot description submitted to the Board by the applicant; and

WHEREAS, at hearing, in response to the Opposition's concerns, the Board requested DOB to respond to both issues; and

WHEREAS, in response, the Department of Buildings issued an objection to the applicant on October 20, 2008 based on the potential non-compliance of the Building plans with the outer court requirements of ZR § 23-841; and

WHEREAS, a subsequent submission by DOB states that amended plans that addressed the objection concerning ZR § 23-841 were approved on October 24, 2008; therefore the Permit was lawfully issued on February 22, 2008; and

WHEREAS, ZR § 11-31(b) provides that building permits issued before the effective date of amendment may be modified after the effective date of the zoning amendment so long as the modifications to such plans do not create a new non-compliance or non-conformity or increase the degree of non-compliance or non-conformity; and

WHEREAS, a further submission by DOB stated that the respective Zoning Lot Descriptions recorded at the City Register and submitted to the Board were essentially identical except for the different format of the lot diagrams; and

WHEREAS, ZR § 11-31(a) provides that the Commissioner of DOB shall determine whether a building permit authorizes the proposed construction; and

WHEREAS, DOB has provided a submission confirming the validity of the permit; and

WHEREAS, based on the determination by DOB, the Board accepts the validity of the Permit on the referenced date of issuance, which is prior to the Enactment Date; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth ZR § 11-31(a) and a decision may be rendered provided the other findings are met; and

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

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

WHEREAS, the applicant states that excavation began on April 21, 2008 and was completed July 22, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, the applicant further states that the excavation was completed in stages, as follows: (1) the entire foundation area was excavated to a level two feet above the final sub-grade level to provide a necessary platform for the drilling rig; and (2) the remaining soil was removed as the piles were installed, with the south end of the site excavated immediately prior to completion; and

WHEREAS, the Opposition asserts that the excavation of the site was not complete since photographs of the site indicated that a mound of earth measuring approximately 1,400 sq. ft. remained on the Enactment Date that was to have been cleared for the foundation; and

WHEREAS, the Opposition further states that no excavation had occurred in an area at the former subway plaza, despite plans depicting that area as a site for a mat foundation; and

WHEREAS, at hearing the Building engineer explained that all excavation for the foundation was complete and that the soil remaining was meant to protect the subway during the construction; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation was approximately 86 percent complete as of the Enactment Date; and

WHEREAS, the applicant states that, as a result of the location of the subject site over a subway station and the MTA right of way, the Building's foundation is unusual and consists of two components; and

WHEREAS, applicant states that one component of the foundation consists of 91 70-foot long drilled friction piles and a 505 cubic yard reaction mass; and

WHEREAS, the applicant further states that the piles do not reach bedrock and are constructed in parts by drilling a hollow steel pipe containing rebar to the full pile depth, filling the pipe with concrete grout, and adding and filling additional pipes on top of each other; many of the piles are drilled at a 24 degree angle; and

WHEREAS, after the piles are completed, the reaction mass is poured around their tops to serve as a large, single

pile cap and as a slab to bear the vertical and lateral loads of the portion of the Building located above the reaction mass as well as lateral loads from the remainder of the Building; and

WHEREAS, the applicant represents that the other component of the foundation consists of the existing subway foundation and structure which covers the majority of the site and was engineered to support a six-story manufacturing building at loads heavier than that of the Building; and

WHEREAS, the applicant states that the subway structure will support the Building's loads in the following manner: existing subway columns support the subway roof, constructed of steel and concrete, which is currently covered with mastic and a layer of fire brick and a thin layer of fill; and

WHEREAS, additional fill and the concrete slab will placed on the existing fill layer and then neoprene vibration isolators will be placed on the concrete mat to support the Building's columns; and

WHEREAS, the applicant represents that the Building's loads will be transferred through the neoprene pads, through the concrete mat, fill, fire brick, and mastic, to the subway roof and its columns and ultimately to the soil below; and

WHEREAS, the applicant further represents that the creation of a foundation to support a building above was contemplated by the MTA in its design for the station, as evidenced by the MTA's original drawing which states that "columns may be placed within the easement area to support structure above the upper plane of easement, provided loads to be supported on subway roof shall not exceed twenty seven hundred (2,700) pounds per square foot" and

WHEREAS, the applicant represents that the use of the existing subway structure to support the Building is consistent with the Building Code definition of a "foundation" as "a construction that transfers building loads to the supporting soil" (see Building Code of the City of New York, Title 27, Subchapter 2); and

WHEREAS. the applicant asserts that because the only construction on the Property that will transfer the Building's loads to the soil will be the reaction mass and the piles -- and the remainder of the Building's loads will be transferred to the existing subway structure (or, in the case of lateral loads, to the reaction mass), which, in turn, will transfer those loads to the soil -- the only components of the Building project that may properly be considered "new foundation" are the reaction mass and the piles, as the existing subway structure forms part of the foundation; and

WHEREAS, the applicant represents that the foundation was approximately 86 percent complete as of the Enactment Date; and

WHEREAS, as noted above, because all 91 required piles had been installed the applicant represents that it has met the threshold necessary to establish substantial progress within the meaning of the statute; and

WHEREAS, the Opposition contends that approximately only 20 percent of the foundation is complete, based on a statement in the July 24, 2008 Stop Work Order issued subsequent to the Enactment Date; and

WHEREAS, the Board notes that the conclusions of the inspector in the Stop Work Order are recorded for the purposes of a finding that the Permit for the property has or has not vested under ZR § 11-331(a), requiring completion of the foundations, and was not meant to be dispositive of the amount of work performed or remaining; and

WHEREAS, the Opposition further contends that the proposed concrete slab serves as the structural system that disperses vertical point loads to the subsurface materials and because it and the proposed five-foot thick pile caps have not yet been installed, that the foundation has not been substantially completed to permit the project to be vested under ZR § 11-331; and

WHEREAS, the Board notes that the standard for vesting set forth in ZR § 11-331 is "substantial progress" on the foundation, rather than "substantial completion," as propounded by the Opponents; and

WHEREAS, the Opposition further contends that the subway structure cannot serve as the foundation for the Building because the Building and its columns are not supported directly by it; and

WHEREAS, a submission by the Building's structural engineer states that the slab above the subway roof is not a concrete mat slab, but is a two-way structural slab which was requested by the New York City Transit Authority to protect the tunnel roof during construction from falling objects and debris; and

WHEREAS, in his submission, the engineer further states that the slab is not designed to transfer building loads to the subway structure; and

WHEREAS, a submission by a consulting structural engineer, based on a review of the structural drawings prepared by the Building's structural engineers concluded that the Building's column loads are distributed through a layer of soil to the rooftop of the substructure where the loads are then directed the substructure's columns and then by extension to the spread footings; and

WHEREAS, the Board finds that the submissions clearly demonstrate that the Building is indeed supported by the existing subway structure and foundation; and

WHEREAS, the Opponents also argue that the precedent created by use of the subway foundation would allow any structure built over a subway to be vested ab initio conferring a windfall for a property owner; and

WHEREAS, a submission by the applicant points out that this outcome is highly unlikely as the requirements for such construction by the MTA are exceedingly onerous and led to extensive delays in the project design and permit approval process for the Building, as well as imposing significant limitations on the location of a newly-developed building; and

WHEREAS, at hearing, the Board asked the applicant to provide a breakdown of the amount of concrete required to complete the foundation; and

WHEREAS, in order to complete the foundation, the applicant states that the owner must pour 502 cubic yards of concrete forming the reaction mass; and

WHEREAS, the applicant states that the work remaining

on the foundation would take six weeks to complete, including two weeks necessary to mobilize the crew; and

WHEREAS, the applicant represents that even if the reaction mass were deemed foundation, the total cost of the work required for that portion of the project is estimated at $650,000, substantially less than the $1,670,000 expense of the 91 completed friction piles; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Carroll Gardens Narrow Street/ Wide Street Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-331, the owner's property rights may not be negated merely because of general community opposition; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the Opposition, as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 302290777-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on May 25, 2009; this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 212-08-A.

Adopted by the Board of Standards and Appeals, November 25, 2008.

212-08-A

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

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

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

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Deirdre Carson.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained a vested right under the common law to complete construction of a proposed building at the referenced premises; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 202-08-BZY (the "BZY Application"), decided the date hereof, which requested a finding by the Board that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while separate applications were filed according to Board procedure, in the interest of convenience it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 24, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

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

WHEREAS, Community Board 6, Brooklyn recommends disapproval of this application; and

WHEREAS, a representative of Assemblywoman Joan L. Millman testified in opposition to this application; and

WHEREAS, several community residents testified in favor of this application; and

WHEREAS, certain members of the community also opposed this application, including the Carroll Gardens Neighborhood Association, Inc., and the Carroll Gardens Coalition for Respectful Development, (collectively, the "Opposition"); and

WHEREAS, specifically, the Opposition raised the following concerns: (1) the permit was invalid; (2) substantial construction was not undertaken; (3) the owner was aware of the proposed rezoning and therefore did not proceed in good faith; (4) the owner unreasonably delayed construction on the development; and (5) the owner is developing on a merged zoning lot; and

WHEREAS, the subject site is located on the northwest corner of Second Place and Smith Street in the Carroll Gardens neighborhood of Brooklyn; and

WHEREAS, the site has a frontage of approximately 82.5 feet on Smith Street and 115 feet on Second Place; the Zoning Lot has a total lot area of 23,023 sq. ft.; and

WHEREAS, the site shares the Zoning Lot with a two-story school/day care facility located at 342 Smith Street; the subject site occupies approximately 9,400 sq. ft. of the Zoning Lot area; and

WHEREAS, the site is proposed to be developed with a seven-story 48-unit residential building (the "Building"), with a total floor area of 61,031 sq. ft. (2.7 FAR); and

WHEREAS, the subject site is located on a "Place Street" which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district; and

WHEREAS, the subject site is subject to an easement in favor of the Transit Authority for a subway entrance, and contains subway structures at or near grade and a subway line below grade; and

WHEREAS, on February 22, 2008, New Building Permit No. 302290777-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, revised structural plans were approved on April 15, 2008 and revised architectural plans were approved on May 5, 2008; the Owner commenced construction of the foundation on April 15, 2008; and

WHEREAS, at the time the permits were issued, Second Place was a "wide street" under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19th century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment, which redefined Second Place as a "narrow street;" and

WHEREAS, the applicant represents that the Building, complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 2.7 (a maximum FAR of 3.0 is permitted), a floor area of 61,031 sq. ft., a street wall height of 66 feet, and a total building height of 70 feet; and

WHEREAS, because the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2, a maximum residential floor area of 43,631 (because of envelope restrictions), a maximum streetwall height of 45 feet, and a maximum building height of 55 feet; and

WHEREAS, because the Building violates these limitations on development fronting on a narrow street and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008, for the permit; and

WHEREAS, it is from this order that the applicant appeals; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; and

WHEREAS, the Board notes that established precedent exists for the proposition that seeking relief pursuant to ZR § 11-30 et seq. does not prevent a property owner from also seeking relief under the common law; and

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

WHEREAS, as reflected in the resolution for the BZY Application, the record for that case and the instant case contains sufficient evidence to make this finding; and

WHEREAS, turning to the substantive findings of the amount of work done and the amount of expenditure, the Board notes that a common law vested right to continue construction generally exists where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of an amendment; and

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

WHEREAS, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance."; and

WHEREAS, as to substantial construction, the applicant represents that after the issuance of the Permit, the following work was completed: (1) 100 percent of the excavation; and (2) installation of 91 friction piles, which comprises approximately 86 percent of the foundation work; and

WHEREAS, in support of this statement, the applicant has submitted photographs, cancelled checks, accounting tables, and invoices for labor and material; and

WHEREAS, the applicant cites to the same work and the same evidence as was presented in the BZY Application; and

WHEREAS, the Opposition argues that substantial construction, as required by the common law, was not undertaken because a proposed concrete slab, which is an element of the Building's foundation, has not yet been installed; and

WHEREAS, for the reasons set forth in the BZY Resolution, the Board finds that the concrete slab is not an element of the Building's foundation because it is not designed to support the Building; and

WHEREAS, assuming arguendo that the Opposition is correct, the applicant states that the balance of the construction work performed at the site would still qualify as "substantial work" based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work discussed by New York State courts; and

WHEREAS, specifically, the Board has reviewed cases of which it is aware through its review of numerous vested rights applications, and agrees that the degree of work completed by the owner in the instant case is comparable to, or in excess of, the degree of work cited by the courts in favor of a positive vesting determination; and

WHEREAS, the Board notes that the appropriate comparison is between the amount of construction work here and that cited by other courts; and

WHEREAS, in light of such comparison, the Board can only conclude that the noted work is substantial; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that the significant progress was made on foundations prior to the Enactment Date, and that said work was substantial; and

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

WHEREAS, as to costs, the applicant states that 26 percent of the budgeted expenditures for the proposed development had been either expended or committed pursuant to irrevocable contracts by the Enactment Date; and

WHEREAS, the Board notes that the budgeted expenditures included site purchase and financing costs, which for the purposes of its analysis here, the Board has excluded; and

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular disallowed costs, the Board concludes that the actual construction costs for the proposed development, both soft and hard, approximate $21.8 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid $2,123,150 for construction and construction management fees, $58,144 for general conditions work, and $16,788 for temporary utilities and power; and

WHEREAS, other costs included $672,632 for architectural and engineering services and plans, $140,235 for other design consultants, $210,704 for testing and inspections, and $22,722 on permits and fees; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional $1,228,000 in connection with the proposed development, because it had executed a binding contract for concrete work; and

WHEREAS, the total of these construction-related costs and commitments is approximately $4.5 million, which means that approximately 20.5 percent of the construction related project costs have been expended or committed; and

WHEREAS, based upon its review of the expenditures and commitments made by the owner and the evidence submitted in support of them, the Board agrees that such costs are substantial; and

WHEREAS, absent any other consideration, the Board would find that the degree of work done and expenditures incurred would be sufficient to meet the common law vesting standard; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the Building under the current zoning, the applicant states that the floor area would be reduced from 61,031 sq. ft. to 43,631 sq. ft. (from an FAR of 2.7 to an FAR of 2.2); and

WHEREAS, the applicant further states that the current zoning would require a reduction in the base height of the Building from 60 feet to 45 feet, and a reduction in the total building height from 70 feet to 55 feet, resulting in the loss of the top two floors of the Building; and

WHEREAS, the applicant states that this would lead to financial loss because approximately 30 percent of the floor area would be lost; and

WHEREAS, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, the applicant states that a 30 percent reduction in floor area would result in a net loss of $11,758,645 in rental income, assuming a 5.5 percent capitalization rate; and

WHEREAS, the Board agrees that the significant reduction in floor area will result in a serious loss; and

WHEREAS, the Board notes that the applicant would also suffer financial loss under the current zoning because further architectural and engineering costs would be required to reconfigure and redesign the Building to account for the loss of the top two floors; and

WHEREAS, the Board additionally notes that a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the Board further notes that the Building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; and

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

WHEREAS, at hearing, the Opposition argued that the instant application must be denied because the owner was aware of the City's intention to rezone the subject site and should therefore not be able to take advantage of the vested rights doctrine to escape the zoning change; and

WHEREAS, the Board notes that ignorance of a zoning change is not a condition to the vesting of a permit; and

WHEREAS, the Opposition also argued that the subject application must be denied because the owner did not begin construction of the Building until several years after purchasing the subject site in 2004, and should not be afforded relief for its purportedly self-created delay; and

WHEREAS, the Board notes that the purchase date of the subject site has no bearing on the analysis of whether the applicant's rights have vested under the common law; and

WHEREAS, the Opposition also argued that the subject application must be denied because the owner "manipulated the system" by developing on a merged zoning lot; and

WHEREAS, the Board notes that real estate development routinely includes the development of merged zoning lots, in which parties enter into an agreement to allocate floor area between different portions of the resulting zoning lot, and that the merger of a zoning lot is not a ground for denial of the instant application; and

WHEREAS, as discussed in the BZY Resolution, the Opposition also expressed concerns about various other aspects of this application; and

WHEREAS, the Board asked the applicant to respond to these concerns, and for the reasons set forth in the BZY Resolution, the Board finds that none of these contentions negates a determination that the owner has obtained a vested right to continue construction of the proposed enlargement; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Carroll Gardens Narrow Street/ Wide Street Rezoning and that the Building does not comply with the new zoning parameters; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 302290777-01-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 for four years from the date of this resolution, to expire on November 25, 2012.

Adopted by the Board of Standards and Appeals, November 25, 2008.

217-08-BZY

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

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

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

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Chaney.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332, to renew a building permit and extend the time for the completion of a two-story enlargement to an existing three-story residential building; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, and then to decision on November 25, 2008; and

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

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

WHEREAS, the subject site is located on the south side of First Place, between Clinton Street and Court Street; and

WHEREAS, the subject site has a total lot area of approximately 2,495 sq. ft. and is currently occupied by a three-story residential building; and

WHEREAS, the applicant proposes a two-story enlargement, with an increase in floor area from 5,035 sq. ft. (2.0 FAR) to approximately 7,467 sq. ft. (3.0 FAR); and

WHEREAS, the subject site is located on a "Place Street" which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district;

WHEREAS, on August 16, 2007, Alteration Permit No. 302334365-01-AL (the "A1 Permit") was issued by the Department of Buildings ("DOB") for the proposed enlargement; and

WHEREAS, when the A1 Permit was issued, First Place was a "wide street" under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19th century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the

"Enactment Date"), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment (the "Amendment"), which redefined First Place as a "narrow street;" and

WHEREAS, the applicant represents that the proposed enlargement complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 3.0 (a maximum FAR of 3.0 is permitted) and a proposed lot coverage of 63 percent (a maximum lot coverage of 65 percent is permitted); and

WHEREAS, because, as a result of the Amendment, the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2 and a maximum lot coverage of 60 percent; and

WHEREAS, because the proposed enlargement violates these limitations on development fronting on a narrow street and construction was not completed as of the Enactment Date, the A1 Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on July 24, 2008 for the permit; and

WHEREAS, the applicant now applies to the Board to reinstate the A1 Permit pursuant to ZR § 11-332, so that the proposed enlargement may be fully constructed under the prior R6 zoning as applied to a wide street; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(3) defines construction such as the proposed enlargement as "other construction"; and

WHEREAS, for "other construction," an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[F]or other construction if construction has not been completed on 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…one term of not more than three months for other construction. 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, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) reads: "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 A1 Permit was issued to the owner by DOB on August 16, 2007 authorizing the proposed enlargement; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; 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 substantial construction or substantial expenditure in the context of an enlargement; and

WHEREAS, the Board notes that the text of this provision requires the Board to evaluate the degree of completed work against what remains to be done; and

WHEREAS, thus, the Board's deliberation focuses upon the amount of work completed versus what remains in terms of actual construction; and

WHEREAS, useful gauges of the substantiality of the completed work are the time spent on construction up to the Enactment Date versus how much time the proposed enlargement will take to complete, as well as a discussion of the complexity of the work already done versus that which remains; 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, accordingly, 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 A1 Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit includes: 100 percent of the foundations, footings, structural steel, masonry, exterior framing, roof, concrete floors, elevator shaft, fire stair, and chimney; 85 percent of mechanical work; 80 percent of work on interior partitions;

75 percent of elevator and sprinkler work; 50 percent of electrical work; and 30 percent of plumbing work; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; a construction timeline and estimate of the time remaining to complete construction; construction documents indicating the work completed; a breakdown of the construction costs by line item and percentage completed; copies of concrete pour tickets, financial records, copies of cancelled checks; and photographs of the interior and exterior of the site, showing that the entire building envelope and much of the interior work is complete; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit; and

WHEREAS, the applicant represents that work commenced on the subject site on August 16, 2007, under the original A1 Permit; and

WHEREAS, the applicant further represents that work continued under the A1 Permit until its expiration on February 23, 2008; the A1 Permit was reissued on March 7, 2008, at which time work re-commenced and was ongoing until the Enactment Date; and

WHEREAS, the applicant states that the most complex work has already been completed, including 100 percent of the building envelope, which is the portion of the project affected by the Amendment; and

WHEREAS, the applicant notes that the remaining work consists of exterior finishes and the completion of mechanical and interior work, which would take approximately 12 weeks to complete; and

WHEREAS, the applicant concludes that based upon the actual work performed under the A1 Permit, the amount of days worked versus those remaining, and the complexity, that substantial construction has been completed sufficient to satisfy the standard in ZR § 11-332; and

WHEREAS, the Board agrees that the number of days that work proceeded, as well as its complexity, are useful as gauges, but further notes that the actual physical construction completed is substantial in of itself, in that it resulted in numerous visible alterations to the existing building necessary to the proposed enlargement; and

WHEREAS, as to costs, the applicant states that from the date of the issuance of the A1 Permit to the date of the zoning amendment, the total expenditures for the enlargement represent approximately $1,011,292 or 64 percent of the $1,592,305 cost to complete; and

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

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

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at Z.R. § 11-332; and

WHEREAS, additionally, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditures were made since the issuance of the permit; 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 permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a three-month extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit No. 302334365-01-AL, 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 enlargement and obtain a certificate of occupancy for one term of three months from the date of this resolution, to expire on February 25, 2009.

Adopted by the Board of Standards and Appeals, November 25, 2008.

239-08-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Appeals granted.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 18, 2008 acting on Department of Buildings Application No. 410147906, reads in pertinent part:

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

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

City Law.

B) The existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the Administrative Code.

A2 - The proposed upgraded private disposal system is partially in the bed of the service road contrary to Department of Building policy;" and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department 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 September 18, 2008, acting on Department of Buildings Application No. 410147906, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 25, 2008"–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure that it complies with all relevant provisions of the Zoning Resolution;

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, November 25, 2008.

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.
PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 13, 2009, at 10 A.M., for continued hearing.

33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.
SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.
PREMISES AFFECTED – 67 Brighton 1st Lane, a/k/a 209-213 Brighton 1st Lane, north side of Brighton 1st lane, 63.19'W of Brighton 1st Street, Block 8670, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –
For Applicant: Abrgail Patterson.
For Administration: Anthony Scaduto, Fire Department.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.

103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.
SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to compete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.
PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –
For Applicant: Lyra Altman.

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

120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.
SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.
PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue,

Block 2393, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Lyra Altman and Nelson Cuesta.

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

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 25, 2008
1:30 P.M.

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

ZONING CALENDAR

203-08-BZ
APPLICANT – Sheldon Lobel, P.C. for Avi Babayof, owner.
SUBJECT – Application August 1, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141); side yards (§23-461) and less than the minimum rear yard (§23-47) in an R-2 zoning district.
PREMISES AFFECTED – 1245 East 23rd Street, located on the east side of East 23rd Street between Avenue L and Avenue M. Block 7641, Lot 26, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Richard Lobel.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 18, 2008, acting on Department of Buildings Application No. 310105775, reads in pertinent part:

"Proposed enlargement of residential building in R2 zoning district:
1. Exceeds permitted floor area pursuant to ZR section 23-141;
2. Provides less than the minimum required open space as per ZR section 23-141;
3. Provides less than the required side yards as per ZR section 23-461;
4. Provides less than the required rear yard as per ZR section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of an existing two-family residence, and conversion into a single-family home which does not comply with the zoning requirements for floor area, open space, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008, and then to decision on November 25, 2008; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 23rd Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family residence with a floor area of approximately 2,469 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in floor area from approximately 2,469 sq. ft. (0.62 FAR) to 4,189 sq. ft. (1.04 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides an open space ratio of 52.6 percent (a minimum of 150 percent is required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the northern lot line with a width of 4'-11½" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement maintains the existing non-complying rear yard with a depth of 18'-1½" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the Board notes that ZR § 73-622(2) prohibits any enlargement within a rear yard from being located within 20'-0" of the rear lot line; and

WHEREAS, the applicant represents that, while it will maintain the existing 18'-1½" rear yard, the proposed extension to the home will be located 20'-0" from the rear lot line; and

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

WHEREAS, the Board finds that the proposed project

will not interfere with any pending public improvement project; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 21, 2008"–(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 4,189 sq. ft. (1.04 FAR); an open space ratio of 52.6 percent; one side yard with a width of 4'-11½" along the northern lot line; and a rear yard with a minimum depth of 18'-1½" for the existing portion of the building and 20'-0" for the enlarged portion of the building, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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

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

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

Adopted by the Board of Standards and Appeals, November 25, 2008.

178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.

PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Mark McCarthy.

ACTION OF THE BOARD – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

For Opposition: Letitia James and Elba Cornier.

ACTION OF THE BOARD – Laid over to January 27, 2009, at 1:30 P.M., for a continued hearing.

20-08-BZ

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

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

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

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Montanez.....1

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

40-08-BZ
APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.
SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.
PREMISES AFFECTED – 3957 Laconia Avenue Northwest corner of east 224th Street Block 4871, Lot 1, Borough of Bronx.
COMMUNITY BOARD #1BX
APPEARANCES –
For Applicant: Adam W. Rothkrug.
For Opposition: Father Gorman and Alonzo de Castro.
ACTION OF THE BOARD – Laid over January 27, 2009, at 1:30 P.M., for decision, hearing closed.

42-08-BZ
APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.
SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (§23-47) in an R3-1 zoning district.
PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik and Leonard Mazarisi.
For Opposition: Joseph Barch.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to January 27, 2009, at 1:30 P.M., for decision, hearing closed.

93-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.
SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.
PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112th Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Adam W. Rothkrug.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

163-08-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.
SUBJECT – Application June 13, 2008 – Variance (§72-21 to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR §24-11 (floor area, FAR ad lot coverage), §24-34 (front yard), §24-35 (side yards), and §25-30 (minimum parking requirements). R2 district.
PREMISES AFFECTED – 2022 Avenue M, southwest corner of the intersection of Avenue M and East 21st Street, Block 7656, Lot 31, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Richard Lobel, Jodah Eckstein, Naftoli Verschlejsses.
For Opposition: Maryann Barchuk and Evea Unger.
ACTION OF THE BOARD – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

175-08-BZ
APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.
SUBJECT – Application July 3, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR §32-10. C6-1 district.
PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancy Street, Block 415, Lot 24, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to December 16, 2008, at 1:30 P.M., for decision, hearing closed.

178-08-BZ
APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.
SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.
PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Susan Klapper.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to December 9, 2008, at 1:30 P.M., for decision, hearing closed.

190-08-BZ
APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.
SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.
PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES – None.
ACTION OF THE BOARD – Laid over to February 24, 2009, at 1:30 P.M., for deferred decision.

195-08-BZ
APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.
SUBJECT – Application July 16, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.
PREMISES AFFECTED – 1350 East 27th Street, west side of East 27th Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Richard Lobel.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to December 16, 2008, at 1:30 P.M., for decision, hearing closed.

196-08-BZ
APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.
SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.
PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M
APPEARANCES –
For Applicant: Joanna Stoica.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Commissioner Montanez.....1
ACTION OF THE BOARD – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

216-08-BZ
APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.
SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.
PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Susan Klapper.
ACTION OF THE BOARD – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

236-08-BZ
APPLICANT – Sheldon Lobel, for Joey Aini, owner.
SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single

family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.
PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to January 13, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.