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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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June 13, 2008

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## DIRECTORY

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# DOCKET

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New Case Filed Up to June 3, 2008  
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**147-08-BZY**

95-04 Allendale Street, Between Atlantic Avenue and 97th Avenue., Block 10007, Lot(s) 108, Borough of **Queens, Community Board: 12**. Extension of time to 11-331 complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008 .

Applicant has been instructed to return to DOB to see if permit can be issued or obtain rev  
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**148-08-BZ**

1383 East 27th Street, East side of East 27th Street, 60 ft. north of Avenue N., Block 7663, Lot(s) 10, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home.  
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**149-08-A**

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**150-08-A**

331 Hillside Avenue, Intersection of Hillside Avenue and the mapped Beach 182nd Street., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4  
-----

**151-08-BZY**

5-15 West 125th Street, Between Fifth Avenue and Malcolm X Boulevard., Block 1723, Lot(s) 31,45,144, Borough of **Manhattan, Community Board: 10**. Extension of time to complete construction (11-331) under the prior district regulations.  
-----

**152-08-A**

515 West 23rd Street, North side of West 23rd Street, between 10th and 11th Avenue., Block 695, Lot(s) 27, Borough of **Manhattan, Community Board: 4**. Appeal seeking to vacate a Stop Work Order issued by the Department of Buildings for failure to obtain the authorization of the adjacent property owner.  
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**153-08-A**

150 Foster Road, Northeast south of forest Road, 159.85' northwest of Dalemere Road, Block 869, Lot(s) 50, 63 (tent. 52), Borough of **Staten Island, Community Board: 2**. Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36 .  
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**154-08-A**

156 Foster Road, Northeast south of forest Road, 159.85' northwest of Dalemere Road, Block 869, Lot(s) 50, 63 (tent. 52), Borough of **Staten Island, Community Board: 2**. Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36 .  
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**155-08-BZ**

282 Beaumont Street, South of Oriental Boulevard., Block 8739, Lot(s) 71, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing two family home.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JULY 1, 2008, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 1, 2008, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**853-53-BZ**

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, Owner, Exxon Mobil Coperati, Lessee.

SUBJECT – Application May 13, 2008 – Extension of Term/waiver to permit the continued operation of a gasoline service station (Mobil) which expired on October 23, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on April 1, 1996 in R3-2/C2-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, South west corner of Avenue X. Block 7429, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**713-55-BZ**

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

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

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

**COMMUNITY BOARD #11Q**

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**268-06-BZ**

APPLICANT – Slater & Beckerman, LLP, for Mokom Sholom Cemetery Association, owner; Northrop Grumman Information Technology, Inc., lessee.

SUBJECT – Application April 24, 2008 – Reopening for an Amendment to previously approved Special Permit (§73-30) to permit a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications (“DoITT”) New York City Wireless Network (“NYCWiN”).

PREMISES AFFECTED – 80-35 Pitkin Avenue, 150’ east of 80<sup>th</sup> Street, Lot 9141, Lot 20, Borough of Queens.

**COMMUNITY BOARD #10Q**

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**APPEALS CALENDAR**

**146-08-A**

APPLICANT – Fire Department of the City of New York  
OWNER: 1620 LLC DBAPK International c/o Jacob Ullman

Lessee: Plastic Kitchens Corp.

SUBJECT – Application May 16, 2008 – Application seeking to modify Certificate of Occupancy No. 84836 to require additional fire protection in the form of an automatic wet sprinkler system for the entire building under the authority under Section 27-4265. C8-2 Zoning District.

PREMISES AFFECTED – 1618-1620 Broadway, Hopkinson Avenue, Block 144, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

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**JULY 1, 2008, 1:30 P.M.**

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

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**ZONING CALENDAR**

**35-08-BZ**

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

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

PREMISES AFFECTED – 1856 East 24<sup>th</sup> Street, west side of 24<sup>th</sup> Street between Avenue R & Avenue S, Block 6829, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**78-08-BZ**

APPLICANT – Flora Edwards, Esq., for SBCSICA, owner.

SUBJECT – Application April 3, 2008 – Variance (§72-21) to permit a new community facility building (South Bronx Charter School). The proposal is contrary to §§123-62 (Maximum floor area ratio for community facilities), 24-11 (Maximum floor area ratio and percentage of lot coverage) and 123-662 (b)(4) (As it relates to street wall height for all buildings in Special Mixed-Use Districts with R6, R7, R8 and R10 district designations). MX-1 (M1-2/R6A).

PREMISES AFFECTED – 611-617 East 133<sup>rd</sup> Street, Block 2546, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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# CALENDAR

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**144-08-BZ**

APPLICANT – Rizzo Group, for William Nelville & Sons USA LLC, owners; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application May 14, 2008 – Special Permit (§73-36) to permit the proposed Physical Culture Establishment on portions of the first and cellar floors. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 225 5<sup>th</sup> Avenue, easterly side of 5<sup>th</sup> Avenue between 26<sup>th</sup> Street and 27<sup>th</sup> Street, Block 856, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 3, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**206-61-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.

SUBJECT – Application March 24, 2008 – Extension of Term/Waiver filed pursuant to §11-411 for an existing six story office building located in an R8-B zoning district. The term of the variance expired on July 11, 2006.

PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, south side, 189’ east of Madison Avenue, Block 868, Lot 49, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Carl A. Sulfaro.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver and a reopening for an extension of term for a previously granted variance permitting a five-story building in a residential zoning district to be used for office use, which expired on July 11, 2006; and

WHEREAS, a public hearing was held on this application on May 20, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

WHEREAS, Community Board 6, Manhattan, has recommended approval of this application; and

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

WHEREAS, the site is located on the south side of East 39<sup>th</sup> Street, 189 feet east of Madison Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 11, 1961, when, under the subject calendar number, the Board granted a variance to permit an existing five-story building, which had been occupied by residential use, to be converted to commercial use for a term of 15 years; and

WHEREAS, subsequently, the term was extended by the Board at various times; and

WHEREAS, most recently, the term expired on July 11,

2006; and

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

WHEREAS, the applicant represents that the application was not filed timely due to administrative oversight; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 11, 1961, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 11, 2006, to expire on July 11, 2016, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received March 24, 2008”- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 11, 2016;

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

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

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

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

(DOB App. No. 110061352)

Adopted by the Board of Standards and Appeals, June 3, 2008.

**18-78-BZII**

APPLICANT – Slater & Beckerman, LLP, for Kiitano Construction Corporation, owner.

SUBJECT – Application April 23, 2008 – Extension of Term for a variance (§72-21) to allow UG6 commercial use in the basement of a residential building, in an R8B zoning district, which expires on May 23, 2008.

PREMISES AFFECTED – 111-113 East 38<sup>th</sup> Street, between Park Avenue and Lexington Avenue, Block 894, Lots 10 and 11, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Joshua Trauner.

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

THE VOTE TO GRANT –

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

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Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a commercial use within a residential zoning district, which expired May 23, 2008; and

WHEREAS, a public hearing was held on this application on May 20, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

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

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

WHEREAS, the site is located on the north side of East 38<sup>th</sup> Street, between Park Avenue and Lexington Avenue; and

WHEREAS, the site is located within an R8B zoning district, and is occupied by a five-story residential building; and

WHEREAS, on April 8, 1975, under BSA Cal. No. 595-74-BZ, the Board granted a variance to permit a change in use of the basement and cellar levels for use by a trade school, for a term which would lapse if the tenant vacated the premises; the tenant subsequently vacated the premises; and

WHEREAS, on May 23, 1978, under the subject calendar number, the Board granted a new variance to permit the conversion of the basement level from doctors' offices into Use Group 6 business offices restricted to the then-owner's use as a real estate office, for a term of ten years; and

WHEREAS, on November 28, 1978, under the subject calendar number, the Board permitted an amendment to omit the restriction that the premises be limited to the then-owner's office use and enumerated additional permitted uses including offices for law, accounting, medicine, dentistry, architecture, engineering, and non-retail real estate management and brokerage, for a term of ten years; and

WHEREAS, the grant was subsequently extended for two ten-year periods and expired on May 23, 2008; and

WHEREAS, the current use of the site is as an office for the accounting, non-retail real estate, and property management functions of a construction business; and

WHEREAS, the applicant represents that the hours of operation are limited to 7:00 a.m. to 11:00 p.m., daily; and

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

WHEREAS, the applicant does not propose any other changes; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 23, 1978, so that as amended this portion of the resolution shall read: "to grant an extension of the variance for a term of ten years from the expiration of the last grant to expire on May 23, 2018; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted; and *on further condition*:

THAT this grant shall expire on May 23, 2018;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted. (DOB Application No. 110115474)

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 127-05-BZII

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

SUBJECT – Application January 30, 2008 – Extension of Term/Extension of Time to obtain C of O (§73-243) to reopen and extend the term for an accessory drive-thru facility at an existing eating and drinking establishment located in a C1-1/R5 zoning district.

PREMISES AFFECTED – 9216 Church Avenue, a/k/a 9220 Church Avenue and 526 East 93<sup>rd</sup> Avenue, southeast side of Church Avenue between East 92<sup>nd</sup> Street and the intersection of East 93<sup>rd</sup> Street and Linden Boulevard, Block 4713, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Josh Rinesmith.

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

**THE VOTE TO GRANT** –

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

Negative: .....0

## THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an extension of term for a drive-through facility, which expired on January 24, 2008; and

WHEREAS, a public hearing was held on this application on April 8, 2008, after due notice by publication in *The City Record*, with a continued hearing on May 13, 2008, and then to decision on June 3, 2008; and

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

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner formed by Church Avenue, East 83<sup>rd</sup> Street, and Linden Boulevard, within a C1-1 (R5) zoning district; and

WHEREAS, on January 24, 2006, under the subject

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calendar number, the Board granted a special permit to legalize the accessory drive-through facility at an existing eating and drinking establishment for a term of two years; and

WHEREAS, the site is operated as Popeye's eating and drinking establishment; and

WHEREAS, the application noted that not all of the proposed construction has been completed since the prior approval; and

WHEREAS, specifically, the applicant noted that neither the proposed curb nor the proposed planters had been installed; and

WHEREAS, during the hearing process, the applicant was able to install the planters and provided photographs reflecting the condition; and

WHEREAS, however, the applicant requests nine months to install the curb and obtain a new certificate of occupancy; and

WHEREAS, the applicant also seeks a ten-year extension of term; and

WHEREAS, based upon its review of the record, the Board finds that the proposed ten-year extension of term and nine-month extension of time to complete work and obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 24, 2006, so that as amended this portion of the resolution shall read: "to grant a ten-year extension of term, to expire on January 24, 2018 and a nine-month extension of time to obtain a certificate of occupancy to March 3, 2009; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the grant shall expire on January 24, 2018;

THAT a certificate of occupancy shall be obtained by March 3, 2009;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administration 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. 301933022)

Adopted by the Board of Standards and Appeals, June 3, 2008.

## 467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application April 16, 2008 – Extension of Term/waiver for the continued use of a gasoline service station (Exxon Mobil) in an R3-2 zoning district which

expired on May 21, 1999.

PREMISES AFFECTED – 172-11 Northern Boulevard, north side blockfront between 172<sup>nd</sup> Street and Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for decision, hearing closed.

## 546-82-BZIII

APPLICANT – Pasquale Carpentiere, owner; Ganesh Budhu, lessee.

SUBJECT – Application April 14, 2008 – Extension of Term for a UG8 parking lot which expires on June 14, 2008 in an R7a/DJ zoning district.

PREMISES AFFECTED – 148-15 89<sup>th</sup> Avenue, north side of 89<sup>th</sup> Avenue, between 148<sup>th</sup> and 150<sup>th</sup> Streets, Block 9693, Lot 60, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Pasquale Carpentiere.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

## 151-90-BZ

APPLICANT – Mitchell S. Ross, for Mega Real Estate Management, Incorporated, owner.

SUBJECT – Application March 13, 2008 – Amendment to allow legalization of existing conventional office use by amending resolution to remove condition limiting occupancy to governmental office use only previously granted by the Board. Located in a R3-2 zoning district.

PREMISES AFFECTED – 115-49 118<sup>th</sup> Street, 115-70 Lefferts Boulevard, East side of 118th Street, 240' north of Sutter Avenue, Block 11711, Lot 18, Borough of Queens.

## COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Mitchell S. Ross.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for continued hearing.

## 164-94-BZII

APPLICANT – Jeffrey A. Chester, Esq., for Tuckahoe Realty, owner; LLC Lucille Roberts Health Club Parkchester, lessee.

SUBJECT – Application March 28, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for a Physical Culture Establishment (Lucille Roberts), in a C1-2/R-6 zoning district, which expired on April 19, 2006.

PREMISES AFFECTED – 84 Hugh Grant Circle, south side of Hugh Grant Circle, 95.69' west of Cross Bronx Expressway, Block 3794, Lot 109, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

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For Applicant: Jeffrey Chester.

## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 192-07-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Metropolitan Home Center, Inc.,

SUBJECT – Application August 7, 2007 – Proposed construction of a four story multiple dwelling located within the bed of mapped street (East 211th street) contrary to Section 35 of the General City Law. R7-1 Zoning District. PREMISES AFFECTED – 3546 Decatur Avenue, intersection of East side of Decatur Avenue and the bed of East 21<sup>st</sup> Street, Block 3356, Lot 190, Borough of Bronx.

### COMMUNITY BOARD #7BX

#### APPEARANCES –

For Applicant: Patrick Gorman.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 27, 2007, acting on Department of Buildings Application No. 200899670 which reads in pertinent part:

“The proposed NB construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required;” and

WHEREAS, this application proposes the construction of a four-story multiple dwelling building, within an R7-1 zoning district, which will be located within the bed of a mapped street (East 211<sup>th</sup> Street); and

WHEREAS, a public hearing was held on this application on March 18, 2008, after due notice by publication in the *City Record*, with continued hearings on April 15, 2008 and May 20, 2008, and then to decision on June 3, 2008; and

WHEREAS, by letter dated September 5, 2007, the Department of Environmental Protection states that it reviewed the above application and has no objections; and

WHEREAS, by letter dated March 18, 2008, the Fire Department states that it has reviewed the above application and has no objections; and

WHEREAS, Department of Transportation (DOT) states that it has reviewed the application and requires the curbs and

sidewalks abutting the proposed development conform to the existing width and alignment of the curbs and sidewalks that currently exist on Decatur Avenue; and

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

WHEREAS, the applicant submitted a revised site plan indicating that the curb and sidewalk abutting the proposed development will conform to the existing width and alignment in Decatur Avenue; and

WHEREAS, by letter dated June 2, 2008, the DOT has reviewed the revised plan and has no further comments; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated July 27, 2007, acting on Department of Buildings Application No. 200899670, 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 April 29, 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 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, June 3, 2008.

### 26-08-A

APPLICANT – Walter T. Gorman, P.E., for Breezy Point Cooperative Inc., owner; Michael & Theresa Flanigan, lessees.

SUBJECT – Application January 13, 2008 – Reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 35 Bedford Avenue, north side 475.70’ west of 12<sup>th</sup> Avenue, Block 16350 Lot p/o 300. Borough of Queens.

### COMMUNITY BOARD #14Q

#### APPEARANCES –

For Applicant: Patrick Gorman.

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

#### THE VOTE TO GRANT –

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

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Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated January 28, 2008, acting on Department of Buildings Application No. 410037516, reads in pertinent part:

“Proposal to enlarge the existing second floor and construct a new roof at a home which lies within an R4 zoning district but does not front on a mapped street (Bedford Avenue) is contrary to Article 3, Section 36 (2) of the General City Law and must, therefore, be referred to the Board of Standards and Appeals for approval;” and

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

WHEREAS, by letter dated, June 3, 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 January 28, 2008, acting on Department of Buildings Application No. 410037516, 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 February 13, 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 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, June 3, 2008.

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### 168-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1479 Rosedale, LLC, owner.

SUBJECT – Application June 18, 2007 – 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 R6 Zoning District.

PREMISES AFFECTED – 1479 Rosedale Avenue, Rosedale Avenue between Mansion Street and Cross Bronx

Expressway, Block 3895, Lot 58, Borough of Bronx.

### COMMUNITY BOARD #9BX

#### APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Jeffrey A. Laufer of Council Member Annabel Palma’s Office, Zenali Tirado of Community Board #9, and Nerva Martinez.

For Administration: Lisa Orrantia.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 10 A.M., for continued hearing.

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### 47-08-A

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

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

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

### COMMUNITY BOARD #14Q

#### APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to June 24, 2008, at 10 A.M., for continued hearing.

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### 48-08-A

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

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

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

### COMMUNITY BOARD #14Q

#### APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for continued hearing.

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### 49-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Charles & Kim Thompson, lessee.

SUBJECT – Application March 4, 2008 – Proposed reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36 and located within mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 305 Hillside Avenue, east side

# MINUTES

Newport Walk, 110/19' south of Oceanside Avenue, Block 16340, Lot 50, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to July 1, 2008, at 10 A.M., for continued hearing.

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*Jeffrey Mulligan, Executive Director*

Adjourned: P.M.

## REGULAR MEETING TUESDAY AFTERNOON, JUNE 3, 2008 1:30 P.M.

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

## ZONING CALENDAR

### 111-07-BZ

APPLICANT – Harold Weinberg, P.E., for Javier Galvez, owner.

SUBJECT – Application May 4, 2007 – Special Permit (§73-622) for the In-Part Legalization of an enlargement to a single family home. This application seeks to vary lot coverage, open space and floor area (§23-141) and side yard (§23-461) in an R3-1 zoning district. It is also proposed to remove the non-complying roof and replace with a complying one.

PREMISES AFFECTED – 155 Norfolk Street, east side, 325' north of Oriental Boulevard, between Oriental Boulevard and Shore Parkway, Block 8757, Lot 34, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

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

THE VOTE TO GRANT –

Affirmative: .....0

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

Recused: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 3, 2007, acting on Department of Buildings Application No. 301474704, reads, in pertinent part:

“The enlargement of the one family residence in an R3-1 zoning district:

1. Increases the degree of non-compliance with

respect to lot coverage and is contrary to Section 23-141 of the Zoning Resolution and 54-31.

2. Increases the degree of non-compliance with respect to floor area ratio and open space and is contrary to Section 23-141 ZR and 54-31.
3. Extends the degree of non-compliance with respect to side yards and is contrary to Sections 23-461 and 54-31;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the legalization of a purported enlargement of a single-family home, which does not comply with the zoning requirements for lot coverage, floor area ratio (FAR), and side yards, contrary to ZR §§ 23-141, 23-461 and 54-31; and

WHEREAS, the Board notes that the site is the subject of a prior Board approval for a special permit, pursuant to ZR § 73-622, under BSA Cal. No. 18-99-BZ, for a home of a different design, which will be discussed in more detail below; and

WHEREAS, the Board notes that the above DOB objections were issued in response to a prior iteration of the proposal, rather than to the most recent plans stamped June 2, 2008, and may not reflect all of the non-complying conditions; and

WHEREAS, during the hearing process, the Board directed the applicant to return to DOB for a review of the plans dated May 27, 2008 (which had been presented as the final set of plans) to ascertain whether there were any additional objections; the applicant finally submitted the audit review on May 30, 2008; and

WHEREAS, the audit reflects 12 objections, one, which will be discussed below, was eliminated by reconsideration; and

WHEREAS, a public hearing was held on this application on November 20, 2008, after due notice by publication in *The City Record*, with continued hearings on February 26, 2008, April 1, 2008 and May 20, 2008, and then to decision on June 3, 2008; and

WHEREAS, a decision date was initially set for May 20, 2008, but, at the applicant’s request, the Board re-opened the record to permit supplemental submissions, which include: (1) DOB-stamped plans dated July 25, 2005 (the “2005 Plans”); (2) a DOB audit of the May 27, 2008 plans, dated May 30, 2008; (3) a revised zoning analysis, stamped June 2, 2008; and (4) revised building plans, stamped June 2, 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 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the Manhattan Beach Community Association provided testimony in opposition to the application, citing concerns that the applicant had not submitted sufficient evidence regarding (1) the conditions of the original home, (2) what portions of the original home

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were retained, and (3) proposed plans which fit within the parameters of the special permit; the Community Association also contends that the prior home was demolished in full and the existing/proposed home is incompatible with neighborhood character; and

WHEREAS, certain other neighbors who oppose the application provided photographs, which are not dated, but purportedly reflect site conditions during construction; and

WHEREAS, the site is located on the east side of Norfolk Street, between Oriental Boulevard and Shore Boulevard; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied by a partially-constructed single-family home, which the applicant concedes does not comply with relevant zoning district regulations or with the parameters of the special permit; and

#### History of development at the site

WHEREAS, on April 27, 1999, under BSA Cal. No. 18-99-BZ, the Board granted a special permit, pursuant to ZR § 73-622, for the enlargement of an existing one-story single-family home at the site; and

WHEREAS, the existing parameters of the home in 1999, as represented by the applicant were: (1) a south side yard with a width of 1'-3"; and (2) a north side yard with a width of 4'-3", and a portion with a width of 0'-11" adjacent to a one-story projection into that yard; and

WHEREAS, the proposed enlargement provided for (1) a floor area of 2,688 sq. ft., (2) a lot coverage of 47 percent, (3) side yards with widths of 1'-3" and 4'-3", (4) a perimeter wall height of 21'-0", and (5) a total building height of 29'-9"; and

WHEREAS, the applicant sought approval of the proposed plans which did not comply with zoning district regulations for rear yard, floor area, lot coverage, and side yards, but could be approved under ZR § 73-622; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained within two years of the grant, by April 27, 2001; in the absence of such a condition, ZR § 73-70 states that a special permit lapses if substantial construction is not completed within four years of the date of the grant, by April 27, 2003; and

WHEREAS, the applicant represents that DOB approved the plans associated with the special permit on August 21, 1999 under DOB App. No. 300493981, and identified it as an Alteration Type 1; the applicant represents that the plans associated with that approval have not been located; and

WHEREAS, the building was not constructed pursuant to the Board-approved plans associated with the 1999 special permit; and

WHEREAS, the applicant represents that on November 21, 2002, the owner filed a different set of plans at DOB, which purportedly reflect an as of right enlargement of the existing one-story home and ultimately began construction; the applicant has been unable to provide a copy of the purportedly stamped and approved plans

associated with the 2002 filing; and

WHEREAS, instead, after the resolution of a series of violations from DOB and ECB, including ones stating that the building was being built contrary to the approved plans (noting that the attic was truly a third floor, and not permitted in the zoning district), the construction was fully permitted on November 17, 2005; and

WHEREAS, since the site remained under the Board's jurisdiction pursuant to the special permit, Board review and approval of changes to the plans approved under BSA Cal. No. 18-99-BZ was required prior to any action at DOB; and

WHEREAS, the Board notes that DOB's Building Information System reflects information that states that the permit appears to have been contingent on the BSA-approved drawings associated with the approval under BSA Cal. No. 18-99-BZ; and

WHEREAS, however, the Board notes that, until the current application, the applicant did not return to the Board to request changes to the plans and that the 2005 Plans are not consistent with the plans approved pursuant BSA Cal. No. 18-99-BZ; and

WHEREAS, the Board notes that yet another set of plans, February 23, 2003, stamped by DOB reflect a two-story with attic home with side yards of 1'-3" and 4'-3", a perimeter wall height of 21'-0", and a total height of 29'-9"; this home was never built; and

WHEREAS, ultimately, the applicant submitted the 2005 Plans to the Board, purportedly approved by the Board approval under BSA Cal. No. 18-99-BZ; and

WHEREAS, however, the Board has reviewed the 2005 Plans and determined that they are not consistent with the Board-approved plans; and

WHEREAS, thus, the Board notes that the applicant filed them erroneously and DOB lacked the jurisdiction to approve them because they do not comply with the Board-approved plans and are not within the parameters of the special permit; and

WHEREAS, DOB has noted and the applicant concedes that the built conditions do not even comply with the erroneous 2005 Plans; and

WHEREAS, complaints about construction at the site resulted in a stop work order being issued on April 28, 2006; a ten-day letter of intent to revoke was subsequently issued; and

#### Required findings of ZR § 73-622

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

WHEREAS, however, the applicant has failed to convince the Board that the proposed legalization meets the parameters of the special permit; and

WHEREAS, specifically, the applicant did not adequately address the two following deficiencies, which were raised by the Board during the public hearing process; and

WHEREAS, the first concern is whether the existing building reflects an actual enlargement of the prior building or, instead, is a new building; and

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WHEREAS, the second issue is whether the width of the pre-existing non-complying side yards has been maintained; and

WHEREAS, as to the first issue, the Board notes that the text of ZR § 73-622 authorizes the Board to approve an enlargement of an existing building only; ground-up construction of a new non-complying building is not permitted; and

WHEREAS, the text repeatedly uses the word “enlargement”, which, pursuant to ZR § 12-10, is defined in part as “an addition to the floor area of an existing building”; and

WHEREAS, the Board notes that the applicant has repeatedly relied on DOB’s Technical Policy and Procedure Notice (TPPN) 1/02, dated July 24, 2002, to support its argument that the construction at the site constitutes an enlargement; and

WHEREAS, the TPPN, titled “Application Type Required for Work Involving Alterations and Demotion in a Building,” sets forth a procedure to determine the kind of application that must be filed for work involving demolition of exterior building walls; and

WHEREAS, specifically, the TPPN describes the conditions for when an application would be considered an Alteration Type 1 versus a New Building; it also sets forth exceptions by which, *inter alia*, DOB could issue an alteration permit for the enlargement of a home pursuant to ZR § 73-622 even if exterior walls had been demolished; and

WHEREAS, the Board notes that the TPPN was in effect from July 24, 2002 until it was amended October 3, 2005, to explicitly eliminate these provisions; and

WHEREAS, the Board notes that during the hearing process, the applicant procured a reconsideration from DOB, dated May 1, 2008, which addressed the issue of whether the construction could be characterized as an Alteration Type 1, rather than a New Building despite the demolition of the exterior walls, pursuant to TPPN 1/02; and

WHEREAS, in the May 1 reconsideration, the Brooklyn Borough Commissioner agreed to accept the application as an Alteration Type 1, despite the fact that the TPPN which previously would have permitted it was not in effect and was therefore irrelevant; and

WHEREAS, additionally, the first objection of the May 30, 2008 DOB audit review, which has been eliminated by reconsideration, also dated May 30, 2008, states: “#1 Dept records indicate the existing one story frame building over a crawl space was demolished in its entirety, and the present building including new foundations with cellar was built. Per TPPN 1/02, withdraw Alt. 1 application and file NB application after legalizing the demolition of the existing building” (emphasis added); and

WHEREAS, the Board respectfully disagrees with the issuance of both reconsiderations; and

WHEREAS, specifically, the Board notes that reliance on the TPPN is to establish whether a building is pre-existing is mistaken because DOB’s criteria for determining whether construction is an alteration is different than the

Board’s criteria for determining whether construction constitutes an enlargement for the purposes of the special permit; and

WHEREAS, secondly, the TPPN was not in effect at the time of the 1999 approval or at the present time; the original version was in effect from July 24, 2002 to October 3, 2005, when it was amended to eliminate the language the applicant relies on; and

WHEREAS, further, the Board notes that the noted objection reflects one of several instances where there is an acknowledgment that the pre-existing home was demolished in its entirety; and

WHEREAS, by letter dated August 8, 2006, the Department of City Planning (DCP), addresses the subject of establishing the appropriate guideline for establishing whether construction is an enlargement for the purposes of ZR § 73-622 and draws a distinction between DOB’s classification of construction as an alteration and the meaning of an “enlargement” to be considered by the Board under ZR § 73-622; and

WHEREAS, DCP states that the Board is not guided by DOB’s determination as to whether construction is an alteration or a new building, when answering the threshold question of whether proposed construction reflects an enlargement for the purposes of ZR § 73-622; and

WHEREAS, instead, DCP states that the Board is guided instead by the text and legislative history of ZR § 73-622, which states that the special permit “was not intended to apply in circumstances where the buildings retain little of their original structure;” and

WHEREAS, therefore, the Board takes the position that the special permit may not be used where there has been, as appears to be the case at the subject site, a demolition of the pre-existing building; and

WHEREAS, in the case of a legalization, the Board often questions the applicant about this issue, as the construction work has already taken place and the Board is unable to ascertain, through visual observation, that there was a pre-existing un-enlarged home; and

WHEREAS, the Board notes that a 2002 survey did not conclusively prove that the resultant building is an enlargement, while it did confirm the side yard parameters; and

WHEREAS, the Board notes that the applicant’s representations as to the history of construction at the site are contradictory and not supported by evidence; and

WHEREAS, specifically, the Board notes that the applicant has alternately claimed that the entire building was demolished – both at hearing and in the context of the May 1, 2008 reconsideration – and that the rear wall and the first floor were retained; and

WHEREAS, in a May 28, 2008 submission, the applicant submitted 15 photographs purporting to reflect that the rear wall of the pre-existing home was retained; and

WHEREAS, the Board notes that the photographs are not dated and do not provide any conclusive evidence as to which, if any, portions of the pre-existing building were retained during construction; and

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WHEREAS, in fact, the photographs appear to reflect a contradiction to the applicant's statement that the first floor was retained; and

WHEREAS, instead, the photographs reflect the condition also reflected on the building plans that the first floor was removed and the plinth raised approximately 4'-9 1/4" above grade and further, that a deeper foundation was constructed; and

WHEREAS, even if the Board were to accept that the rear wall was retained, a single wall does not constitute a building capable of being enlarged, within the ambit of the special permit; and

WHEREAS, throughout the hearing process, the applicant also made the following contentions: (1) the building was not demolished since no violations were issued, and (2) all four walls must be taken down in order to qualify as a demolition and, in this case, the rear wall remained; and

WHEREAS, the Board disagrees and states that: (1) the absence of violations is not prima facie evidence that the building was built within the parameters of the ZR and the Building Code, and (2) as noted above, the Board does not rely on DOB's criteria for establishing whether construction is an enlargement for the purposes of ZR § 73-622; and

WHEREAS, notwithstanding the well-established standard that construction must be an enlargement in order to qualify for a special permit under ZR § 73-622, the applicant actually stated that the building was demolished to grade but that it would still constitute an enlargement pursuant to a reconsideration from DOB, which relies on the un-amended TPPN 1/02 and concerns certain exceptions to the general conception of what a "new building" is; and

WHEREAS, as noted, DOB's criteria for identifying construction as either a new building or an alteration is not derived from the legislative intent or the text of ZR § 73-622 and is thus not relevant to the Board's analysis of the applicability of the special permit; and

WHEREAS, the Board again is guided by the ZR § 12-10 definition and DCP, which rely on the existence and maintenance of floor area as the basis for an existing building to be enlarged and that when all walls are demolished, no floor area exists; and

WHEREAS, further, the Board notes that even if it were to consider the TPPN relevant, the TPPN was not in effect during either time the site has been before the Board as it had not been adopted at the time of the original 1999 special permit; nor is the TPPN in effect now; and

WHEREAS, the Board notes that DOB issued a stop work order as to the construction; and

WHEREAS, accordingly, the Board does not consider the existence of an Alteration Type 1 permit, the terms of which have been violated, to be evidence that there was a pre-existing building that was enlarged; and

WHEREAS, further DCP says "[t]he fact that DOB allows buildings to be partially demolished pursuant to a type of permit called an 'alteration' permit does not justify thwarting the purposes of the Zoning Resolution to allow what is essentially a new non-complying building to be

erected;" and

WHEREAS, the applicant also states that no violations were issued for illegal demolition, which must mean that no demolition occurred; and

WHEREAS, again, the Board does not consider the absence of violations to be dispositive, as the DOB does not perform daily inspections of all permitted work; thus, demolition could have occurred notwithstanding the absence of violations; and

WHEREAS, the applicant has submitted testimony and, as noted, numerous contradictory surveys and versions of building plans into the record, which fail to convince the Board that the construction at the site constitutes an enlargement under any meaning of the word; and

WHEREAS, thus, the applicant has not submitted into the record any firm evidence that the existing building is an enlargement of a prior building; and

WHEREAS, however, the applicant has submitted into the record evidence which suggests that the prior building and the existing building may not be the same building, due, for example, to inconsistent side yard widths and a change in the height of the plinth; and

WHEREAS, ZR § 73-622 does not authorize the Board to engage in speculation as to whether a home proposed to be legalized is an enlarged home; and

WHEREAS, instead, where a legalization is proposed, the applicant must convince the Board that the current home represents an enlargement of a prior home; and

WHEREAS, here, the applicant failed to meet this burden of proof; and

WHEREAS, the Board rejected the applicant's claim that the building had been enlarged in a similar case in which the applicant was unable to provide evidence that the current home represented an enlargement of a pre-existing home (see BSA Cal. No. 320-04-BZ); and

WHEREAS, the New York Supreme Court upheld the Board's decision in BSA Cal. No. 320-04-BZ, stating that the applicant "had the burden to prove it was actually an enlargement . . . it was entirely rational for BSA to disregard [inconsistent plans] as proof of an enlargement to an existing building" (see *Reznikov v. BSA*, 2007 N.Y. Slip Op. 18203/06, Kings Sup., May 2, 2007; and

WHEREAS, similarly, in the absence of any acceptable affirmative proof that the pre-existing building follows either the ZR § 12-10 definition of enlargement or DCP's proffered interpretation of it, the applicant fails to meet a threshold for relief under ZR § 73-622; and

WHEREAS, given the record before it, the Board is unable to conclude that the existing or proposed building is an enlargement of a prior building as opposed to a new building; and

WHEREAS, the *Reznikov* court found that "an 'enlargement' is defined by ZR § 12-10 as 'an addition to floor area of an existing building . . . (emphasis added)" which has not been established here; and

WHEREAS, accordingly, the subject special permit is not available to legalize the existing building; and

WHEREAS, a supplemental issue is the side yards of

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the existing home; and

WHEREAS, the Board notes that during the application and hearing process the applicant presented multiple iterations of the proposed plans, the existing plans, the purported pre-existing plans, and surveys of the site, which contained numerous inconsistencies and misrepresentations; and

WHEREAS, the inconsistencies include representations of the FAR, perimeter wall height, total height, side yard widths; and

WHEREAS, the Board notes that the record associated with the 1999 special permit reflect a south side yard with a width of 1'-3"; the 1999 existing conditions plans, the 2003 DOB-approved plans, and the applicant's own plans and statements represent the pre-enlargement condition as 1'-3"; the 2002 survey is unclear but appears to reflect a south side yard with a width in the range of 1'-2 1/2" and 1'-3 1/2"; and

WHEREAS, the Board requested a clear copy of the 2002 survey to help establish the dimensions of the yards, but one was never submitted; and

WHEREAS, however, the applicant is requesting to reduce the south side yard to a width of 1'-0"; and

WHEREAS, the applicant argues that although a reduction, it is *de minimus* and should be permitted; and

WHEREAS, as to the north side yard, the applicant's representation of the dimensions of it have been inconsistent and the applicant has not established that the width of the pre-existing yard was equal to or greater than what is existing now; and

WHEREAS, specifically, the applicant's representations as to the pre-existing dimensions of that yard have varied from 4'-3" and 0'-11" to 4'-0"/4'-5" and 1'-0"; and

WHEREAS, the Board notes, however, that even if it were to construe the applicant's representations in the most liberal way, the proposed reduction of the north side yard from 4'-3" to 4'-0" at any point, the proposed reduction of the small portion of the side yard, with a width of 0'-10 3/4", and the proposed reduction of the south side yard from 1'-3" to 1'-0" reflect reductions in the widths of the side yards and are not permitted under ZR § 73-622; and

WHEREAS, the Board cites to the text of ZR § 73-622, which states "any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*"; and

WHEREAS, the Board acknowledges that even if the admitted reduction in the width of the side yards appears to be minor, two issues remain: (1) the applicant bears the burden of establishing the pre-existing conditions and the Board is not required to speculate as to whether the proposed construction fits within the parameters of the special permit requirement for an enlargement (see Reznikov v. BSA); and (2) the text of ZR § 73-622 does not provide for any exception to the provision cited above that

the enlargement shall not result in the decrease in the width of the side yard; and

WHEREAS, the Board notes that the text clearly states that the enlargement into the side yard shall not result in a decrease in the width of that yard and does not include any exception for what may be deemed minor decreases; and

WHEREAS, further, the Board does not have any authority or discretion to exceed the parameters of the text set forth in ZR § 73-622; and

WHEREAS, the Board raised additional questions during the hearing process including those about (1) the compliance of the perimeter wall height and (2) the floor area calculations; and

WHEREAS, however, because the applicant was unable to establish the threshold requirement that the proposed building constitutes an enlargement of the pre-existing home, none of the supplemental zoning issues are relevant; and

WHEREAS, accordingly, even assuming that the applicant had submitted sufficient evidence that the existing home is actually an enlargement of a prior home, the special permit would still not be available because the Board does not have the jurisdiction to approve a reduction in the width of the non-complying side yards; and

WHEREAS, in conclusion, the Board finds that it is without authority to grant the requested special permit pursuant to ZR § 73-622; and

WHEREAS, the Board notes that due to the new non-compliances, which cannot be remedied by the special permit, the proposed building could also never have been constructed legally under the provisions of ZR § 54-31, which provides that: "Except as otherwise provided in Section 54-313, a *non-complying building or other structure* may be *enlarged* or converted, provided that no *enlargement* or conversion may be made which would either create a new *non-compliance* or increase the degree of *non-compliance* of a *building or other structure* or any portion thereof;" and

*Therefore it is Resolved* that the determination of the Brooklyn Borough Commissioner, dated May 3, 2007, acting on Department of Buildings Application No. 301474704, is hereby upheld and that this application for a special permit pursuant to ZR § 73-622 is hereby denied.

Adopted by the Board of Standards and Appeals, June 3, 2008.

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**200-07-BZ**  
**CEQR #08-BSA-022R**

APPLICANT – Rampulla Associates Architects, for Ortho Health Care Realty, LLC, owner.

SUBJECT – Application August 10, 2007 – Variance (§72-21) for new horizontal and vertical addition to existing commercial building for medical offices (UG 4). Proposal is contrary to §22-14. R3-1 district within Special South Richmond District and Special Growth Management District.

PREMISES AFFECTED – 3333 Hylan Boulevard, north west side of Hylan Boulevard, east of Spratt Avenue, Block

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4987, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #3SI

### APPEARANCES –

For Applicant: Philip Rampulla.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Superintendent, dated January 24, 2008, acting on Department of Buildings Application No. 510026650, reads in pertinent part:

“The Proposed New Building for an Ambulatory Diagnostic or treatment facility (UG 4) with more than 1,500 SF located in an R3-1 Residential Zoning District is contrary to ZR 22-14”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district within the Special South Richmond Development District (SSRD) and the Lower Density Growth Management area, the construction of a 9,989 sq. ft. two-story building with cellar to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 37 parking spaces, contrary to ZR § 22-14; and

WHEREAS, the applicant initially sought a variance under ZR § 72-21 to permit construction of a 16,159 sq. ft. two-story building with cellar health care facility (Use Group 4) on the site; and

WHEREAS, the applicant subsequently modified the application to reduce the size of the facility to 9,989 sq. ft. and recast it as a special permit, rather than a variance, permitting its construction; and

WHEREAS, a public hearing was held on this application on December 11, 2007 after due notice by publication in *The City Record*, with continued hearings on February 26, 2008, April 8, 2008, and May 20, 2008, and then to decision on June 3, 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 3, Staten Island, recommends approval of this application; and

WHEREAS, City Council Member Vincent Ignizio and Assembly Member Louis R. Tobacco recommend approval of this application; and

WHEREAS, Borough President James P. Molinaro recommends approval of this application; and

WHEREAS, a local civic organization and certain neighborhood residents provided written and oral testimony in opposition to this application citing concerns with traffic, parking and noise; and

WHEREAS, the application is brought on behalf of Orthopedic Healthcare Realty, LLC, a privately owned medical

facility which operates an adjacent affiliate facility at 3311 Hylan Boulevard; and

WHEREAS, the subject site is located on the western half of the block bounded on the north by Block Street, on the south by Hylan Boulevard, on the west by Spratt Avenue and on the east by Hopkins Avenue, within an R3-1 zoning district ; and

WHEREAS, the site has a lot area of 26,178 sq. ft. and is currently occupied by a vacant eating and drinking establishment (Use Group 6) with a floor area of 5,561 sq. ft., which is proposed to be demolished; and

WHEREAS, the site is the subject of prior Board actions, under BSA Cal. No. 691-53-BZ, which permitted the extension of an existing restaurant in a residential district, and BSA Cal. No. 294-74-BZ, permitting the enlargement of the formerly existing restaurant; and

WHEREAS, the proposed facility will occupy 9,989 sq. ft. of floor area (0.38 FAR) on the first and second floors, and approximately 4,426 sq. ft. of floor space in the cellar; and

WHEREAS, the cellar level of the proposed medical facility will be occupied by office space, pursuant to ZR § 25-31, the cellar floor space is included in the total floor area when calculating the required parking; accordingly, the total floor area for parking calculation purposes is approximately 14,414 sq. ft.; and

WHEREAS, therefore, 37 parking spaces will be provided (36 spaces are required, one space for every 400 sq. ft. of floor area); and

WHEREAS, the applicant represents that the facility will provide ambulatory diagnostic and treatment health care services related to the practice of orthopedics (Use Group 4); and

WHEREAS, a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, pursuant to ZR § 73-125, the Board may grant a request to permit an increase in the floor area of an ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 10,000 sq. ft. on the site, provided that the Board finds that the amount of open area and its distribution on the zoning lot conforms to standards appropriate to the character of the neighborhood; and

WHEREAS, the applicant represents that the facility will have a floor area of 9,989 sq. ft., which the Board notes is less than the maximum of 10,000 sq. ft. permitted by the special permit; and

WHEREAS, the applicant states that the building will provide three new front yard setbacks where none previously existed; with a setback of 18’-0” from Spratt Avenue, a setback of 18’-0” from the rear lot line on Block Street, and a setback of approximately 57’-0” along Hylan Boulevard, and that these setbacks meet or exceed the minimum requirements for an otherwise conforming residential development; and

WHEREAS, the applicant further states that the 25’-0” height of the proposed facility complies with the district

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height limitations; and

WHEREAS, the applicant represents that approximately 79 percent of the zoning lot will remain as open space (including landscaping and parking areas), exceeding the residential equivalent minimum of 65 percent; and

WHEREAS, accordingly, the Board finds that the height of the building, the amount of open area and its distribution on the zoning lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, pursuant to ZR § 73-03, the Board may not grant a request for alteration and enlargement of the site, if such enlargement would either: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; or (4) interfere with any pending public improvement project; and

WHEREAS, the applicant states that the proposed facility will have operating hours of 9:00 a.m. to 9:00 p.m. Monday through Saturday; and 9:00 a.m. to 5:00 p.m. on Sunday; and

WHEREAS, the applicant represents that approximately 100 patients will be served by the facility each day, based on the number of examination rooms, the type of medical facility proposed, the orthopedic-related services to be rendered, and the length of patient visits associated with such services; and

WHEREAS, with respect to concerns about traffic, the applicant initially submitted a traffic analysis based on the operation of its existing facility at 3311 Hylan Boulevard; and

WHEREAS, at the Board's request, the applicant further analyzed project generated traffic, travel patterns and trip assignments; and

WHEREAS, the applicant states that while Hylan Boulevard is a major thoroughfare carrying heavy traffic volume, Spratt Avenue and Hopkins Avenue carry minimal traffic; and

WHEREAS, the applicant further states that seven days of automated traffic recorder data gathered at the intersection of Hylan Boulevard and Hopkins Avenue indicated that southbound traffic volume on Hopkins Avenue approaching Hylan Boulevard never exceeded forty per hour and that such a traffic volume is indicative of a local road network operating well below its carrying capacity; and

WHEREAS, the applicant states that a patient and employee survey was conducted at its existing facility during a typical week to determine the mode of travel and to project the number of incremental trips the new facility would generate; and

WHEREAS, the applicant represents that the employee and patient surveys indicate that an estimated six new vehicles per hour would be added to local streets during the peak period; and

WHEREAS, the applicant further represents that a project-generated traffic analysis indicates that the incremental traffic associated with the project would add a maximum of 18 vehicles per hour to the intersection of Hylan Boulevard and Buffalo Street, and an increase of 15 cars to the intersection at Hopkins Avenue and Thollen Street during the peak travel hour, including all approaches, numbers well below the threshold level of 50 hourly trips above which there is a potential which warrants further study; and

WHEREAS, the applicant's additional traffic analyses demonstrate that neither the incremental nor the actual traffic generated by the proposed ambulatory diagnostic/treatment health care facility would generate enough peak-hour trips to create a significant impact at any intersection; and

WHEREAS, the trip generation levels demonstrated for the proposed building are well below threshold levels under City Environmental Quality Review that would require further analysis to determine whether they might result in significant adverse impacts on traffic; and

WHEREAS, the applicant represents that, pursuant to CEQR procedures, no further traffic analysis is required; and

WHEREAS, while the Board recognizes that traffic along Hylan Boulevard in the area of the proposed diagnostic/treatment health care facility is heavy, any additional traffic generated would be minimal and does not warrant further study; and

WHEREAS, according to the site plan, traffic will enter the site from curb cuts at Hopkins Avenue or at Hylan Boulevard and will exit the site from either Hylan Boulevard or Spratt Avenue; and

WHEREAS, with respect to concerns about parking, the Board notes that the applicant is providing more parking spaces than the 36 spaces which are required; and

WHEREAS, the plans reflect that 37 spaces are proposed on the subject site and an additional 12 spaces will be shared with its affiliate facility at 3311 Hylan Boulevard; and

WHEREAS, the Board notes that ZR § 25-541 permits accessory off-street parking spaces to be provided in facilities designed to jointly serve two or more buildings on zoning lots; and

WHEREAS, however, the Board requested that the Department of Buildings review the proposed parking layout and applicability of ZR § 25-541; and

WHEREAS, in a pre-consideration dated March 13, 2008, the Staten Island Borough Commissioner confirmed the applicability of ZR § 25-541 to the subject site contingent: (i) on the provision of an easement and deed restriction for the parking spaces shared by both lots; (ii) the filing of an alteration permit for 3311 Hylan Boulevard indicating such easement and deed restriction; and (iii) the listing of the required number of spaces on the "Schedule A" filed in connection with the permits for the respective properties; and

WHEREAS, at hearing, neighborhood residents

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asserted that the parking lot at 3311 Hylan Boulevard was inadequate to meet patient demand at that facility; and

WHEREAS, the applicant represents that the combined parking facility of 49 spaces would meet the parking demand generated by both facilities because the number of patient visits will increase by 67 percent, from 150 per day to 250 per day; but the number of available off-street parking spaces will increase by 300 percent; and

WHEREAS, the applicant further represents that a parking accumulation study analyzing arrival and departure patterns for both offices at 3311 and 3333 Hylan Boulevard indicated that the peak period from 12 noon to 1:00 p.m. would generate parking demand by 50 vehicles, thereby requiring curbside parking for one vehicle; and

WHEREAS, the applicant further states that, due to the availability of adequate number of curbside parking spaces on the block surrounding the site, no potential for parking impacts is associated with the proposed facility; and

WHEREAS, the applicant further states that a site visit during typical business hours on a weekday morning that curbside parking on Hopkins Avenue between Hylan Boulevard and Block Street was approximately 30 percent unoccupied, that approximately 50 percent of the curbside spaces on Block Street were unoccupied and that few cars were parked on Spratt Street; and

WHEREAS, photographs were submitted into the record indicating the availability of curbside parking on Spratt Street, Hopkins Avenue and Block Street surrounding the subject site; and

WHEREAS, as the site is within the Special South Richmond Development District (SSRD), an authorization pursuant to ZR § 107-68 by the City Planning Commission (CPC) for group parking in excess of 30 vehicles and a curb cut on Hylan Boulevard is required; and

WHEREAS, in order to grant this authorization, CPC must find that the project design will draw a minimum of traffic through local residential streets, and that the location of the curb cut would not adversely affect pedestrian traffic; and

WHEREAS, the applicant represents that it will seek such authorization from CPC; and

WHEREAS, at hearing, neighborhood residents requested that the curb cut on Spratt Avenue be eliminated to reduce potential traffic through their community; and

WHEREAS, in a submission to the Board, the applicant represented that the elimination of the exit onto Spratt Avenue would render nine angled parking spaces unusable, since vehicles would not have sufficient circulation space to turn around and exit from the proposed curb cut on Hylan Boulevard; and

WHEREAS, the Board notes that the Spratt Avenue curb cut would be used only by cars exiting the site and its elimination would only increase cars exiting on Hylan Boulevard (a heavy arterial road); and

WHEREAS, given the traffic patterns and circulation on local streets in the area, it is unlikely that the elimination of the curb cut would reduce the number of vehicles traveling on Spratt Avenue; and

WHEREAS, the Board notes that the proposed circulation plan, as well as the proposed entrances and exits, provide for better distribution of vehicles within the surrounding street network; and

WHEREAS, neighborhood residents also expressed concerns with potential noise from mechanical equipment mounted on the roof of the building; and

WHEREAS, the applicant states that the distance from the front building wall of the nearest home, located at 216 Spratt Avenue, to the front wall of the proposed building will be 103'-0", thereby exceeding the minimum standard of 100'-0" established by the present NYC Building Code and maintained by the proposed new Building Code; and

WHEREAS, however, according to the building plans, the distance from the side wall of 197 Spratt Avenue to the Block Street property line of the proposed building is only 89'-0", below the minimum standard required by the Building Code; and

WHEREAS, in a revised submission, the applicant indicates that in order to maintain the minimum distance required, roof top mechanical equipment will be located a minimum of 11'-0" away from the Block Street side of the building; and

WHEREAS, neighborhood residents also raised concerns at hearing with the impact on neighborhood character posed by the building's size and proximity to a residential community; and

WHEREAS, as noted above, the applicant further states that approximately 79 percent of the zoning lot will remain as open space (including landscaping and parking areas), exceeding the residential equivalent minimum of 65 percent; and

WHEREAS, as also noted above, the applicant further states that the building will provide three new front yard setbacks; with a setback of 18'-0" from Spratt Avenue, a setback of 18'-0" from the rear lot line on Block Street, and a setback of approximately 57'-0" along Hylan Boulevard; and

WHEREAS, the applicant states that these setbacks meet or exceed the minimum requirements for an otherwise conforming residential development and represents that the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant further represents that the former use on the site, an eating and drinking establishment (Use Group 6), had no front yard setbacks and its hours of operation and parking demand imposed greater impacts on the neighboring community than the proposed medical facility; and

WHEREAS, accordingly, the Board finds that the proposed ambulatory diagnostic/treatment health care facility will neither: (i) alter the essential character of the surrounding neighborhood; (ii) impair the use or development of adjacent properties; nor (iii) be detrimental to the public welfare; and

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

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

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

WHEREAS, the project is classified as Unlisted pursuant to 6 NYCRR Part 617(ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA022R, dated March 26, 2008; and

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

WHEREAS, a trip generation analysis dated April 30, 2008 determined that the proposed action would generate less than fifty (50) new vehicle trips in any peak hour (below the CEQR Technical Manual threshold for conducting a detailed analysis of traffic impacts) and therefore the proposed action would not have any potentially significant adverse impacts related to traffic and parking; and

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district within the Special South Richmond Development District (SSRD) and the Lower Density Growth Management area, construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 37 (plus 12) parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2008" – one (1) sheet and "Received April 29, 2008" – three (3) sheets; and *on further condition*:

THAT there shall be no change in use of the site as a Use Group 4 ambulatory diagnostic/ treatment facility without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. Monday through Saturday; 9:00 a.m. to

5:00 p.m. on Sunday;

THAT landscaping shall be provided and maintained, as per the approved plans;

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

THAT approval is conditioned on obtaining an authorization pursuant to ZR § 107-68 from the City Planning Commission (CPC) permitting group parking in excess of 30 vehicles and a curb cut on Hylan Boulevard;

THAT approval is conditioned on the recording of an easement and deed restriction against the title for 3311 Hylan Boulevard (Block 4987, Lot 20) and the title for 3333 Hylan Boulevard (Bloc 4987, Lot 1) reflecting that the accessory parking for each respective property is shared with the other;

THAT the above conditions shall appear on the Certificate of Occupancy and the above-described deed restriction and easement shall be referenced on the Certificate of Occupancy for 3311 Hylan Boulevard;

THAT the parameters of the building shall be as follows: 9,989 sq. ft. of floor area on the first and second floors, 4,426 ft. of floor space in the cellar, and 37 (plus twelve) parking spaces, as per the approved plans;

THAT parking spaces be striped and directional traffic signals be indicated on the parking lot paving as shown on the approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## **219-07-BZ CEQR #08-BSA-020M**

APPLICANT – Sheldon Lobel, P.C., for Eternal Sino Int. Dev. Condo., LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application September 24, 2001 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment on the second floor of an existing building. Proposal contrary to section 42-13. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36<sup>th</sup> Street, located on the north side of West 36<sup>th</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup>

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Avenues, Block 838, Lot 35, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Josh Rinesmith.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 27, 2007, acting on Department of Buildings Application No. 104851830, reads in pertinent part:

“Proposed massage establishment (SPA) is considered a physical culture establishment [ZR 12-10] and is not permitted as-of-right in M1-6 zoning district as per ZR 42-13;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a six-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 18, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 13, 2008, and then to decision on June 3, 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 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 36<sup>th</sup> Street, between Fifth Avenue and Sixth Avenue; and

WHEREAS, the PCE occupies a total of approximately 1,670 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE will be operated as Cosmos Spa; and

WHEREAS, the applicant represents that the services at the PCE will include massage, skincare, and other beauty services; and

WHEREAS, the hours of operation will be: daily, 10:00 a.m. to 2:00 a.m.; and

WHEREAS, at hearing, the Board asked the applicant for a history of the operations of the PCE; and

WHEREAS, the applicant responded that the site had operated as a PCE from approximately December 2006 until February 2008, when it ceased operations as a special permit was sought; and

WHEREAS, the Board notes that the establishment operating at the site during that time received violations for purportedly operating contrary to the certificate of occupancy and contrary to zoning; and

WHEREAS, the Board notes that the operations at the site have ceased, but requested to see marketing information and masseuse licenses for the proposed PCE; and

WHEREAS, in response, the applicant provided: (1) marketing materials, which reflect the proposed use; and (2) copies of masseuse licenses; and

WHEREAS, the Board notes that because this is a legalization, and because the business has been the subject of violations, that a limited term is appropriate as the PCE becomes established pursuant to zoning regulations associated with the special permit; and

WHEREAS, accordingly, the Board stated that a two-year term would be appropriate for its initial term; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA020M, dated February 29, 2008; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental

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Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, the legalization of a physical culture establishment on the second floor of a six-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 29, 2008”- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 3, 2010;

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

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

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

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

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

THAT prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 227-07-BZ

### CEQR #08-BSA-025K

APPLICANT – Snyder & Snyder, LLP/Omnipoint Communications Inc., for Mikhail Arabov, owner.

SUBJECT – Application October 1, 2007 – Special Permit (§73-30) to permit approval for a proposed 52 foot non-accessory radio tower and related equipment at grade.

PREMISES AFFECTED – 1595 Canarsie Road, Block 8277, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Robert Gaudioso.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 14, 2007, acting on Department of Buildings Application No. 302314369, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to NYC Department of Buildings Technical Policy and Procedure Notice #5/98 and therefore not allowable within R4 District. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on March 11, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 13, 2008 and then to decision on June 3, 2008; and

WHEREAS, Community Board 18, Brooklyn, recommends disapproval of this application, citing concerns with its potential impacts on neighborhood character and health; and

WHEREAS, representatives of the United Canarsie South Civic Association and neighborhood residents (collectively, the “Opposition”) presented written and oral testimony at hearing raising concerns with the appearance of the proposed tower and the surrounding site, perceived safety and health hazards, and its potential abandonment; and

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

WHEREAS, the applicant states that the proposed telecommunications pole, as modified, will consist of an 50-foot high monopole with internally mounted antennas and related equipment located within fenced area; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

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

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

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traffic impacts are anticipated; and

WHEREAS, the applicant states that related equipment cabinets will be installed within a six-foot opaque locked fence enclosure; and

WHEREAS, the proposed telecommunications facility was initially designed to resemble a flagpole, with an American flag that would be illuminated at night; and

WHEREAS, in response to concerns raised by the Opposition, at hearing the Board requested that the applicant modify its proposal to eliminate the flag and the proposed lighting and to ensure that fencing and screening be located within the property line; and

WHEREAS, in response to concerns raised by the Opposition as to the impact of the its size on the surrounding residential neighborhood, the Board also asked the applicant whether it was possible to reduce the height and width of the proposed telecommunications tower; and

WHEREAS, in response, the applicant submitted revised plans showing complying fencing and agreed to eliminate the flag and lighting and to reduce the width of the pole by 4" and its height by 2'-0" from the 52'-0" originally proposed; and

WHEREAS, the applicant represents that the 50'-0" height is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, in response to concerns raised by the Opposition about the appearance of the site, the applicant states that the site's fencing has been replaced and that a new tree has been planted; and

WHEREAS, in response to the safety and health concerns raised by the Opposition, the applicant represents that the facility will be constructed in such a manner that it cannot collapse and submitted a compliance report certifying that emissions of the facility will conform to standards promulgated by the Federal Communications Commission in accordance with federal law; and

WHEREAS, at hearing, the Board also asked the applicant whether alternative sites outside the residential zoning district were evaluated, particularly within nearby Parks Department properties at Canarsie Park and at 1440 Paedergat Avenue North; and

WHEREAS, in a submission to the Board, the applicant reported that the Parks Department was unwilling to lease either property and that alternative sites were found to be either too close to existing wireless facilities operated by the same carrier or too far from the site to provide the extent of coverage necessary; and

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

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

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding

neighborhood, nor will it impair the future use and development of the surrounding area; and

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 07-BSA-025Q, dated October 1, 2007; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §73-03 and §73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR §§ 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received June 3, 2008"-(5) sheets; and *on further condition*;

THAT any fencing and landscaping will be maintained in accordance with BSA-approved plans;

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

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

THAT the telecommunications pole will be removed if its operation is ceased;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

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Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 269-07-BZ

### CEQR #08-BSA-037R

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Seaside Enterprises, LLC, owner.

SUBJECT – Application November 26, 2007 – Special Permit (§73-125) to allow a cellar and two (2) story ambulatory diagnostic/treatment care facility (medical offices, UG 4). R3-1 district.

PREMISES AFFECTED – 378 Seaview Avenue, south side of Seaview Avenue, between Mason Avenue and Simpson Street, Block 3380, Lots 65, 68 and 70, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 26, 2007, acting on Department of Buildings Application No. 510019196, reads in pertinent part:

“Proposed construction of ambulatory diagnostic or treatment health care facility, located in an R3-1 zone, exceeds 1,500 square feet, contrary to ZR. Refer to Board of Standards and Appeals for review”; and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district, the construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 25 parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on April 15, 2008 after due notice by publication in *The City Record*, with a continued hearing on May 20, 2008, and then to decision on June 3, 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 2, Staten Island, recommends disapproval of this application, and

WHEREAS, the subject site is located on the south side of Seaview Avenue, between Mason Avenue and Simpson Street, within an R3-1 zoning district ; and

WHEREAS, the site has a lot area of 17,500 sq. ft. and is currently occupied by a single family home and three garages that are proposed to be demolished; and

WHEREAS, the facility will occupy 6,683 sq. ft. of floor area (0.38 FAR) on the first and second floors and approximately 3,114 sq. ft. of floor space in the cellar; and

WHEREAS, because there will be office space in the cellar level, the floor space in the cellar is included in the total floor area when calculating the required parking; therefore, the total floor area for parking calculation purposes is 9,797 sq. ft.; and

WHEREAS, therefore, 25 parking spaces will be provided (24 parking spaces are required, one space per every 400 sq. ft. of floor area); and

WHEREAS, the applicant represents that the facility will provide Use Group 4 ambulatory diagnostic and treatment health care services, with the specific types of medical services to be determined; and

WHEREAS, the Board notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, the special permit pursuant to ZR § 73-125 allows for an increase in the floor area of the ambulatory diagnostic/treatment health care facility use from 1,500 sq. ft. up to a maximum of 10,000 sq. ft. on the site; and

WHEREAS, the Board notes that the proposed building provides for approximately 80 percent open space (45 percent is the minimum required); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant states that the proposed facility will be limited to daytime operating hours; and

WHEREAS, the applicant initially submitted a traffic analysis which analyzed the incremental difference between an as of right development and the proposed project, based on the operation of an existing professional/ medical office building at 210 Northern Boulevard, Queens (BSA Cal. No. 351-04-BZ); and

WHEREAS, based on that analysis, the applicant represents that the proposed facility would generate a number of pedestrian trips and vehicle trips throughout an average day, and during the peak period that was below the threshold levels under which City Environmental Quality Review would require further analysis to determine whether they might result in significant adverse impacts; and

WHEREAS, at hearing, the Board asked the applicant to provide a comprehensive breakdown of the person and vehicular trips to be generated by an as of right facility, in

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addition to the person and vehicular trips to be generated by the proposed building, and the incremental difference in the number of trips generated between the as of right and the proposed building; and

WHEREAS, the applicant revised its analysis accordingly and represents that the results indicate that no significant impacts related to traffic, parking, transit, or pedestrians are expected to occur; and

WHEREAS, the applicant proposes to provide two 15'-0" curb cuts on Seaview Avenue; one curb cut limited to entrances and the other curb cut limited to exits; and

WHEREAS, the Board notes that the applicant is providing all of the required parking and does not anticipate overflow; and

WHEREAS, the applicant represents that the proposed facility is consistent with the neighborhood character which is characterized by a mix of community facility, residential and office uses and which includes Staten Island University Hospital located to the east of the site; and

WHEREAS, the plans indicate that landscaping is provided along the perimeter of the site in conformity with the requirements of ZR § 37-90 for a site with more than 18 parking spaces; and

WHEREAS, the applicant agreed to direct lighting away from neighboring residential sites; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 08BSA037R, dated March 11, 2008; and

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

WHEREAS, the Board has determined that the operation of the facility will not have a significant adverse impact on the

environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings ZR §§ 73-125 and 73-03, to permit, on a site within an R3-1 zoning district, the construction of a two-story and cellar building to be occupied by an ambulatory diagnostic/treatment health care facility (Use Group 4) with 25 parking spaces, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2008"—eleven (11) sheets; and *on further condition*:

THAT there shall be no change in use of the building as an ambulatory diagnostic/treatment health care facility (Use Group 4);

THAT landscaping, screening, curb cuts and bicycle parking shall be provided and maintained, as per the approved plans;

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

THAT the parameters of the building shall be as follows: 6,683 sq. ft. of floor area on the first and second floor, 3,114 sq. ft. of floor space in the cellar, and 25 parking spaces, as per the approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## **14-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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## 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.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 24, 2007, acting on Department of Buildings Application No. 310051172, reads in pertinent part:

“The proposed enlargement to existing home is contrary to ZR Sections ZR 23-46 (side yard) and ZR 23-47 (rear yard) and therefore requires a special permit pursuant to ZR 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, with continued hearings on April 8, 2008 and May 13, 2008, and then to decision on June 3, 2008; and

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

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

WHEREAS, the subject site is located on the west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 3,105.5 sq. ft. (0.80 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,105.5 sq. ft. (0.80 FAR), to 4,934.6 sq. ft. (1.24 FAR); the maximum floor area permitted is 5,000 sq. ft. (1.25 FAR); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

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

WHEREAS, the proposed enlargement will (1) maintain the existing non-complying side yard with a width of 4'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required) and (2) provide a second side yard with a width of 13'-0"; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home

would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also directed the applicant to (1) confirm that the proposed building complies with height and setback requirements and (2) re-design the light wells, which appear to encroach into the side yard; and

WHEREAS, in response, the applicant (1) provided an axiomatic diagram, which reflects that the height and setback of the proposed home fit within the permitted sky exposure plane envelope and (2) re-designed the light wells to reflect a maximum permitted width of 1'-6"; 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 R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 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 April 29, 2008”–(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 1,190.6 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 4,943.6 sq. ft. (1.24 FAR), side yards with minimum widths of 4'-0" and 13'-0", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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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, June 3, 2008.

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## 31-08-BZ

### CEQR #08-BSA-056R

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to allow a 110- foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

### COMMUNITY BOARD #2SI

#### APPEARANCES –

For Applicant: Robert Gaudio.

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

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 13, 2008, acting on Department of Buildings Application No. 510021557, reads in pertinent part:

“Unipole in an R3-2 district requires the issuance of a special permit by the BSA (ZR 73-30);” and

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

WHEREAS, the site is the subject of a variance to permit the construction of a two-story office building in an R3-2 zoning district, under BSA Cal. No. 456-85-BZ; it is also the subject of an appeal to permit the installation of drywells, under BSA Cal. No. 220-88-A; and

WHEREAS, the applicant concurrently requested an amendment to the variance; there are separate resolutions for the subject special permit and the amendment, but the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 13, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

WHEREAS, Community Board 2, Staten Island,

recommends approval of this application; 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, the proposed telecommunications pole will be located at a site which is occupied by a two-story office building (Use Group 6); and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to support the City’s public safety and public service agencies; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 110-foot tall pole with internally-mounted antennas and related equipment, located within a fenced area; and

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

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

WHEREAS, the applicant states that the telecommunications pole and related equipment cabinets will be installed within an opaque fence enclosure; and

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

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

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

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

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and

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

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-056R, dated February 19, 2008; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R3-2 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received June 3, 2008"-(6) sheets; and *on further condition*;

THAT any fencing will be maintained in accordance with BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 456-85-BZ

APPLICANT – Slater & Beckerman, LLP, for Mark Lauria, Thomas DeVito, Henry Setaro, owners; Northop Grumman

Info. Tech. Inc., lessees.

SUBJECT – Application February 19, 2008 – Amendment to reopen for minor change to the site to include a non-accessory radio tower pursuant to ZR §73-30 and file under separate BSA application.

PREMISES AFFECTED – 2043 Richmond Avenue, between Ashworth Avenue and Rockland Avenue, Block 2015, Lot 42, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, this is an application for an amendment to a previously granted variance which permitted the construction of a two-story commercial building within an R3-2 zoning district; and

WHEREAS, concurrent with this application, under BSA Cal. No. 31-08-BZ, the applicant seeks a special permit, pursuant to ZR § 73-30, to permit the construction of a telecommunications pole; the cases were heard together and the record is the same for both; and

WHEREAS a public hearing was held on this application on May 13, 2008 after due notice by publication in *The City Record*, and then to decision on June 3, 2008; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; 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, the site is located on the east side of Richmond Avenue, between Ashworth Avenue and Rockland Avenue; and

WHEREAS, the Board has exercised jurisdiction over the site since May 16, 1989, when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story office building in an R3-2 zoning district; under BSA Cal. No. 220-88-A, the Board also approved the use of drywells for the disposal of storm water; and

WHEREAS, the applicant now proposes to construct a telecommunications pole, with a height of 110 feet with internally-mounted antennas and related equipment, located within a fenced area at the site; and

WHEREAS, the proposed telecommunications pole is part of the New York City Department of Information Technology and Telecommunications (DoITT) New York City Wireless Network (NYCWIn) and the application is brought on behalf of the City of New York; and

WHEREAS, the applicant represents that the NYCWiN system will provide a citywide data network designed to support the City's public safety and public

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service agencies; and

WHEREAS, the Board notes that no changes are being made to the original grant other than the addition of the telecommunications pole to the site plan, pursuant to ZR § 73-30, which, as noted, is being requested concurrently under BSA Cal. No. 31-08-BZ; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the site plan, in conjunction with the separate request for the special permit, pursuant to ZR § 73-30, at the site are appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 16, 1989, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the proposed telecommunications pole at the site” *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received June 3, 2008”- (6) sheets; and *on further condition*:

THAT any fencing will be maintained in accordance with BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 54-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Muller, owner.

SUBJECT – Application March 12, 2008 – Special Permit (§73-622) for the enlargement of a single family residence. This application seeks to vary floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 3199 Bedford Avenue, east side of Bedford Avenue, between Avenue J and K, Block 7607, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Fredrick A. Becker.

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 12, 2008, acting on Department of Buildings Application No. 310091254, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30’.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard, straight line extension, is less than the 5’-0” minimum side yard permitted;” and

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

WHEREAS, a public hearing was held on this application on April 15, 2008, after due notice by publication in *The City Record*, with a continued hearing on May 20, 2008 and then to decision on June 3, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, 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 Bedford Avenue, between Avenue J and Avenue K; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with floor area of 2,332.88 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,332.88 sq. ft. (0.62 FAR), to 3,764 sq. ft. (1.00 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 53.71 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the enlargement of the home is not located within 20’-0” of the rear lot line; and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 3’-6” (a minimum width of 5’-0” is required for each side yard); and

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WHEREAS, the applicant notes that due to the condition of the lot having a pre-existing undersized width, the required total side yard width is 12'-2", pursuant to ZR § 23-48, and is proposed; 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 single-family home, which does not comply with the zoning requirements for floor area, open space ratio, rear yard, and side 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 May 6, 2008"-(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 510 sq. ft.;

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

THAT the following shall be the bulk parameters of the building: a total floor area of 3,764 sq. ft. (1.00 FAR), a minimum open space ratio of 53.71 percent, side yards with minimum widths of 3'-6" and 8'-8", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, June 3, 2008.

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## 197-05-BZ

APPLICANT – Blank Rome LLP, by Marvin Mitzner, for B & E 813 Broadway, LLC & Broadway Realty, owner.

SUBJECT – Application August 17, 2005 – Variance (§72-21) to allow a 11-story residential building with ground floor retail; contrary to regulations for FAR and open space ratio (§23-142), front wall height, setback and sky-exposure plane (§33-432), and maximum number of dwelling units (§23-22). C6-1 district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12<sup>th</sup> Street, Block 563, Lots 33 & 34, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## 109-07-BZ

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

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

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

## COMMUNITY BOARD #2Q

APPEARANCES – None.

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

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## 169-07-BZ

APPLICANT – Jacqueline M. Cigliano, for Chen Lai Ho, owner.

SUBJECT – Application June 18, 2007 – Variance (§72-21) to allow a single-family home; contrary to regulations for minimum lot width (§23-32). R1-1(NA-2) district.

PREMISES AFFECTED – 626 West 254<sup>th</sup> Street, southerly line of 254<sup>th</sup> Street, east of intersection of West 254<sup>th</sup> Street and Independence Avenue, Block 5942, Lot 308, Borough of Bronx.

## COMMUNITY BOARD #8BX

APPEARANCES –

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For Applicant: Mindy Chin.

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

## 173-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gitty Gubitz-Rosenberg, owner.

SUBJECT – Application June 21, 2007 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space ratio (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1061 East 21<sup>st</sup> Street, located on the east side of East 21<sup>st</sup> Street between Avenue I and Avenue J, Block 7585, Lot 33, 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.....5

Negative:.....0

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

## 189-07-BZ

APPLICANT – Eric Palatnik, P.C., for Feng Dong, owner.

SUBJECT – Application August 2, 2007 – Variance (§72-21) to allow ground floor retail use (UG 6) within a six (6) story residential building; contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 40-55 College Point Boulevard, east side of College Point Boulevard, between the LIRR right-of-way and 41<sup>st</sup> Avenue, Block 5037, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

## 243-07-BZ/244-07-A

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

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

PREMISES AFFECTED – 120 John Street, northwest corner of the intersection of John Street and Douglas Street,

Block 1123, Lot 120, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Marie Wausnock.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

## 257-07-BZ

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

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

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

### COMMUNITY BOARD #11M

APPEARANCES – None.

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

## 258-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Exxon Mobil Oil Corp., owner.

SUBJECT – Application October 24, 2007 – Special Permit (§73-211) to permit in a C2-2/R6 zoning district, the reconstruction of an existing automotive service station with accessory uses including an accessory convenience store.

PREMISES AFFECTED – 105-55 Horace Harding Expressway, northwest corner of 108<sup>th</sup> Street, Block 1964, Lot 23, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Carl. A. Sulfaro.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

## 291-07-BZ

APPLICANT – Eric Palatnik, P.C., for Cong. Tifereth Torna Eliezer, owner.

SUBJECT – Application December 27, 2007 – Variance (§72-21) to permit the alteration of the existing residential structure to create a Use Group 4 synagogue with accessory

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rabbi's quarters. The proposal is contrary to sections 24-35 (side yards), 24-391 (rear yard), 24-34 (front yard), and 24-521 (front wall height). R4 district.

PREMISES AFFECTED – 1912 New York Avenue, between Avenues J and K, Block 7614, Lot 66, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Eric Palatnik and Lewis Garfinkel.

**ACTION OF THE BOARD** – Laid over to July 15, 2008, at 1:30 P.M., for continued hearing.

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## 32-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Baron Hirsch Cemetery Assn. Inc., owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application February 19, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 1126 Richmond Avenue, intersection of entrance to the Baron De Hirsch Cemetery adjacent to Mark Street, Block 1668, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Joe Deker and Robert Gardioso.

For Opposition: Dorothy Flores, Thomas Shust, Frank Rizzi and Theresa Smith.

THE VOTE TO CLOSE HEARING –

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

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

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## 44-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Peggy Hoffman and Abraham Joseph Hoffman, owners.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)), and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1015 East 23<sup>rd</sup> Street, East 23<sup>rd</sup> Street between Avenues J and K, Block 7605, Lot 38, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

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

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## 50-08-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Sylvester's R.C. Church, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 6, 2008 – Special Permit (§73-30) to permit, a 90-foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. PREMISES AFFECTED – 265McKinley Avenue, between Grant Avenue and Eldert Lane, Block 4175, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Carol Slater and Robert Gardioso.

For Opposition: Ricardo A. Sánchez.

THE VOTE TO CLOSE HEARING –

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

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

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## 52-08-BZ

APPLICANT – Dennis D. Dell' Angelo, for Yossi Amar, owner.

SUBJECT – Application March 7, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and lot coverage (§23-141); side yards (§23-461) and rear yard requirement (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 3935 Bedford Avenue, east side of Bedford Avenue, Block 6811, Lot 72, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis Dell' Angelo.

THE VOTE TO CLOSE HEARING –

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

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

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## 53-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese, Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese, owner; Northrop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2000 – Special Permit (§73-30), to permit a 90 foot non-accessory radio tower as part of the New York City Department of Information Technology and Telecommunications/Wireless Network. R3-2 zoning district.

PREMISES AFFECTED – 300 Soundview Avenue, intersection of Soundview Avenue, White Plains Road and

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O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

*Jeff Mulligan, Executive Director*

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Robert Gardioso.

*Adjourned: P.M.*

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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**731-68-BZ**

APPLICANT – Slater & Beckerman, LLP, for Lucy Lanese,  
Lorraine Di Nirdi, Joseph Lanese, Lawrence Lanese,  
owners; Northop Grumman Info. Tech. Inc., lessee.

SUBJECT – Application March 11, 2008 – Amendment  
(§73-30) to allow the site showing removal of gas tanks and  
proposed change for a non-accessory radio tower.

PREMISES AFFECTED – 300 Soundview Avenue,  
intersection of Soundview Avenue, White Plains Road and  
O'Brien Avenue, Block 3474, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Robert Gardioso.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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**55-08-BZ**

APPLICANT – Walter T. Gorman, P.E., for Eileen &  
Benjamin Seiden, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 13, 2008 – Special Permit  
filed pursuant to §§11-411 & 73-01(d) to reinstate a  
variance previously granted under BSA calendar number  
381-60-BZ, which expired on November 1, 1995, allowing  
the operation of an Automotive Service Station with  
accessory uses in a R7-2 zoning district.

PREMISES AFFECTED – 350/58 East Houston Street,  
North west corner of Avenue C, Block 384, Lot 33, Borough  
of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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