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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

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Roy Starrin, *Deputy Director*
Margaret P. Stix, *Counsel*

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

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

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CALENDAR

JANUARY 13, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 13, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

617-56-BZ
APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer, owner.
SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.
PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231st Street, Block 3267, Lot 15, Borough of Bronx.
COMMUNITY BOARD #15BX

1228-79-BZ
APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.
SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.
PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.
COMMUNITY BOARD #15BK

245-03-BZ
APPLICANT – Joseph P. Morsellino, Esq., for Allied Enterprises LLC, owner.
SUBJECT – Application November 25, 2008 – Extension of Term of a previously granted special permit for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), in an R3-2/C1-2 zoning district, which expired on December 9, 2008.
PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.
COMMUNITY BOARD #7Q

97-08-BZ
APPLICANT – New York City Board of Standards and Appeals.
OWNER: Chesky Berkowitz.
LESSEE: Central UTA.
SUBJECT – Application April 18, 2008– To consider dismissal for lack of prosecution – Special Permit (§73-19) to allow legalization of existing community facility use, contrary to use regulations.
PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #3BK

APPEALS CALENDAR

213-08-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Thomas Durante, lessee.
SUBJECT – Application August 19, 2008 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street and not fronting on a mapped street contrary to General City Law Section 36. R4 zoning district.
PREMISES AFFECTED – 68 Hillside Avenue, south side of Hillside Avenue, 172.10' east of mapped Beach 178th Street, Block 16340, Lot 50, Borough of Queens.
COMMUNITY BOARD #14Q

242-08-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Noreen Haggerty, lessee.
SUBJECT – Application September 26, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Section 36 of the GCL and partially in the bed of a mapped street contrary to Section 35 of the GCL. R4 zoning district.
PREMISES AFFECTED – 53 Beach 216th Street, east side Tioga Walk, 225.04' south of 6th Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

245-08-BZY
APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.
SUBJECT – Application October 23, 2008 - Extension of time to complete construction (§11-331) of minor development commenced under the prior C2-2/R3-2 district regulations. C1-1/R3X.
PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.
COMMUNITY BOARD #13Q

CALENDAR

JANUARY 13, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 13, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

63-08-BZ
APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner
SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.
PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.
COMMUNITY BOARD #6Q

188-08-BZ
APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.
SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.
PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #8M

207-08-BZ
APPLICANT – Eric Palatnik, P.C., for Cheon Park, owner.
SUBJECT – Application August 11, 2008 – Variance (§72-21) to permit the expansion on the first floor of an existing day care center. The proposal is contrary to ZR Section 24-34 (front yard). R4 district.
PREMISES AFFECTED – 40-69 94th Street, northern corner of the intersection formed by 41st Avenue and 94th Street, Block 1587, Lot 1, Borough of Queens.
COMMUNITY BOARD #7Q

222-08-BZ
APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.
SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.
PREMISES AFFECTED – 71 Beumont Street, for east side of Beaumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.
COMMUNITY BOARD #15BK

257-08-BZ
APPLICANT – Slater & Beckerman, LLP, for 120 East 56th Street, LLC, owner; Susan Ciminelli, Inc., lessee.
SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the second floor in an existing 15-story commercial building. The proposal is contrary to ZR Section 32-10. C5-2 district.
PREMISES AFFECTED – 120 East 56th Street, between Park Avenue and Lexington Avenue, Block 1310, Lot 65, Borough of Manhattan.
COMMUNITY BOARD #5M

289-08-BZ
APPLICANT – Dennis D. Dell'Angelo, for Ephraim Nierenberg, owner.
SUBJECT – Application November 21, 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); side yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.
PREMISES AFFECTED – 966 East 23rd Street, west side of East 23rd, 220' north of Avenue J, Block 7586, Lot 75, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, DECEMBER 9, 2008
10:00 A.M.

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

SPECIAL ORDER CALENDAR

389-85-BZ
APPLICANT – Walter T. Gorman, P.E., P.C., for Exxon Mobil Corporation, owner; Mobil On The Run, lessee.
SUBJECT – Application June 13, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil), in a C2-3/R7-1 zoning district, which expired on October 26, 2000 and an Amendment to legalize the conversion of the service bays to a convenience store.
PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road, Bronx Park East and Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.
COMMUNITY BOARD #11BX
APPEARANCES –
For Applicant: 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, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses, and an amendment to permit certain modifications to the previously approved site plan; and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008 and November 25, 2008, and then to decision on December 9, 2008; and

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

WHEREAS, Community Board 11, Bronx, recommends disapproval of this application; and

WHEREAS, the site is located on the north side of Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, within a C2-3 (R7-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1985 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-211 authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, the grant was extended on October 26, 1999 for a term of 15 years from the expiration of the prior grant, to expire November 26, 2015; a condition of the grant was that a new certificate of occupancy be obtained by October 26, 2000; and

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

WHEREAS, the applicant represents that the delay in obtaining a new certificate of occupancy was due to a filing error by the previous applicant; and

WHEREAS, the applicant also seeks to amend the grant to legalize site conditions that fail to conform to the previously approved plans, to reflect: (i) the conversion of the service building to an accessory convenience store; (ii) the enlargement to 35 feet of the two 30-foot curb cuts located on White Plains Road from and enlargement of the curb cut located on Bronx Park East from 26 feet to 31 feet; (iii) the relocation of parking spaces from the Bronx Park East property line to the west side of the service building; and (iv) the addition of a sign on both the east and west sides of the service building; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the retail convenience store is contained within a completely enclosed building; and (ii) the retail convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, initially, the applicant also sought to legalize the enlargement of the two curb cuts on Bronxdale Avenue; and

WHEREAS, at hearing, the Board raised concerns about the dimensions of the curb cuts; and

WHEREAS, in response, the applicant submitted revised plans indicating that the two curb cuts on Bronxdale Avenue would be restored to the dimensions specified on the BSA-approved plans; and

WHEREAS, the Board also questioned whether it was necessary to maintain all of the five curb cuts located on the site; and

WHEREAS, in response, the applicant submitted a traffic flow diagram indicating that all five curb cuts are necessary so that the delivery process can take place without causing on-site traffic congestion; deliveries must be made approximately every 36 hours because the site has only 12,000 gallons of storage capacity; and

WHEREAS, the Board notes that the New York State Department of Environmental Conservation ("DEC") recorded active spills at this site, identified as Spill No. 0409198 and Spill No. 9914247; and

WHEREAS, in response, the applicant provided a statement confirming that it will contact DEC and comply with the necessary remediation procedures; and

WHEREAS, based upon its review of the record, the Board finds that the requested one-year extension of time to obtain a certificate of occupancy and amendment to the approved plans are appropriate with certain conditions as set forth below.

herefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 26, 1985, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 9, 2009, and to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 14, 2008"–(6) sheets; and *on further condition:*

THAT a certificate of occupancy shall be obtained by December 9, 2009;

THAT all signage shall comply with C2 zoning district regulations;

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

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

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. 210037244)

Adopted by the Board of Standards and Appeals December 9, 2008.

117-97-BZ

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

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

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

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term, which expired on September 15, 2008; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, with a continued hearing on November 18, 2008, and then to decision on December 9, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of the proposal; and

WHEREAS, the site is located on the south side of Forest Avenue, between Greenleaf Avenue and Dubois Avenue; and

WHEREAS, the site is within an R3-2 zoning district and is occupied by a two-story eating and drinking establishment (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1998 when, under the subject calendar number, the Board granted a variance permitting the enlargement of a legal non-conforming eating and drinking establishment (Use Group 6); and

WHEREAS, the applicant now seeks to extend the term of the special permit, which expired on September 15, 2008; and

WHEREAS, the Board notes that, based on observations from its site visits, conditions on the site varied from previously approved plans, in that: (i) an outdoor seating area was located on the roof of the first floor, at the rear of the building; (ii) the signage was non-compliant with previous plans; and (iii) the hours of operation were not being complied with; and

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

WHEREAS, in response the applicant submitted revised plans indicating that the first floor roof at the rear of the building is not to be used as a seating area at any time, and that the signage is now in compliance with C1 zoning regulations; and

WHEREAS, additionally, the applicant represents that the hours of operation are now compliant with the terms of the prior grant; 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 September 15, 1998, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the

expiration of the prior grant, to expire on September 15, 2018, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received December 8 2008"-(7) sheets; and *on further condition*:

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

THAT the term shall expire on September 18, 2018;

THAT the site be maintained free of debris and graffiti;

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

THAT all signage shall comply with C1 zoning regulations;

THAT the Department of Buildings shall review the approved plans for compliance with all egress requirements;

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 Application No. 510051382)

Adopted by the Board of Standards and Appeals, December 9, 2008.

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; Exxon Mobil Corporation, lessee.

SUBJECT – Application October 6, 2008 – Extension of Time to Obtain a Certificate of Occupancy for a (UG16) Gasoline Service Station (Mobil), in a C2-2/R6B zoning district, which will expire on February 12, 2009.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side of blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

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, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

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

WHEREAS, the site is located on the east side of Bell Boulevard between 45th Road and Northern Boulevard, in a C2-2 (R6B) zoning district; and

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

WHEREAS, on May 3, 1960, under BSA Cal. No. 477-31-BZ, the Board granted a variance to permit the construction of a gasoline service station located partially within a business district and partially within a residential district; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the replacement of the existing non-conforming gasoline service station with a larger gasoline service station and an accessory convenience store, to expire on September 19, 2010; and

WHEREAS, on February 12, 2008, under the subject calendar number, the Board permitted an amendment to the plans and an extension of time to complete construction and obtain a certificate of occupancy; the grant included a condition that a new certificate of occupancy be obtained by February 12, 2009; and

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

WHEREAS, the applicant represents that the owner will be unable to obtain the certificate of occupancy by the stipulated date due to a boundary dispute with the adjoining property owner; and

WHEREAS, the Board requested that the applicant establish that it is in the process of resolving the boundary dispute; and

WHEREAS, in response, the applicant submitted a motion to quiet title over the area in dispute, which it has filed with the New York State Supreme Court, Queens County; and

WHEREAS, based upon its review of the record, the Board finds that a one-year extension of time to obtain a certificate of occupancy until February 12, 2010 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 September 19, 2000, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to February 12, 2010; *on condition*:

THAT a certificate of occupancy shall be obtained by February 12, 2010;

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

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

Adopted by the Board of Standards and Appeals, December 9, 2008.

159-07-BZ
APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center Incorporated, owner; Dolphin Fitness Clubs, lessee.
SUBJECT – Application October 6, 2008 – Extension of Time to complete construction to allow the legalization of a P.C.E. on the second floor of a two story commercial building (Stillwell Sports Center) and an Extension of Time to Obtain a Certificate of Occupancy, in a C8-2 zoning district, which expired on May 27, 2008.
PREMISES AFFECTED – 2402 86th Street, southeast corner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #11BK
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 a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy for a physical culture establishment (PCE), which expired on May 27, 2008; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

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

WHEREAS, the site is located on the southeast corner of the intersection at 86th Street and 24th Avenue, in a C8-2 zoning district; and

WHEREAS, the site is currently occupied by a two-story mixed-use commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 27, 2007, when, under the subject calendar number, the Board permitted the legalization of a PCE on the second floor of the building; a condition of the grant was that a new certificate of occupancy be obtained by May 27, 2008; and

WHEREAS, the applicant represents that the owner was unable to obtain the certificate of occupancy within the stipulated time due to the lengthy approval process of the plans; and

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

WHEREAS, based upon its review of the record, the Board finds that a one-year extension of time to obtain a certificate of occupancy until December 9, 2009 is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 27, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 9, 2009; *on condition*:

THAT a certificate of occupancy shall be obtained by December 9, 2009;

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

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

Adopted by the Board of Standards and Appeals, December 9, 2008.

217-03-BZ
APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.
SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.
PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.
COMMUNITY BOARD #5BK
APPEARANCES –
For Applicant: Jordan Most.
ACTION OF THE BOARD – Laid over to January 27, 2009, at 10 A.M., for an adjourned hearing.

26-02-BZII
APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.
SUBJECT – Application June 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C1-2/R3X zoning district, which expired on December 10, 2006.
PREMISES AFFECTED – 1680 Richmond Avenue, northwest corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Patrick Gorman.
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 January 13, 2009, at 10 A.M., for decision, hearing closed.

242-03-BZII
APPLICANT – Moshe M. Friedman, P.E., for Sion Maslaton, owner.
SUBJECT – Application November 18, 2008 – Extension of Time/waiver to obtain a Certificate of Occupancy which

expired on January 13, 2008 and an Amendment to legalize the as-built condition of a previously granted Special Permit (§73-622) in an R3-2 zoning district.
PREMISES AFFECTED – 1858 East 26th Street, West side 285'-0" north of the intersection formed by East 26th Street and Avenue S. Block 6831, Lot 30, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Yosef S. Gottdiener.
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 January 13, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

39-07-A thru 40-07-A
APPLICANT – Sheldon Lobel, P.C., for Blue Granite, owner.
SUBJECT – Application February 2, 2007 – Proposed construction of two , 3 story, 3 family homes located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.
PREMISES AFFECTED – 3248, 3250 Wickham Avenue, unnamed street between Wickham and Givan Avenue, Block 4755, Lots 65 & 66, Borough of Bronx.
COMMUNITY BOARD #12BX
APPEARANCES –
For Applicant: Jordan Most.
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 January 19, 2007, acting on Department of Buildings Application Nos. 201088401 and 201088410, reads in pertinent part:

> "Proposed three family dwelling is in the bed of an unnamed mapped street. Comply with Section 35 of the General City Law, refer to the Board of Standards and Appeals for an Administrative Appeal;" and

WHEREAS, these applications request permission to build two three-story, three-family semi-detached homes partially in the bed of an unnamed mapped street located between Givan Avenue and Wickham Avenue; and

WHEREAS, a public hearing was held on these applications on December 11, 2007, after due notice by publication in the *City Record*, with continued hearings on January 15, 2008, February 26, 2008, April 15, 2008, June 24, 2008, August 19, 2008, October 7, 2008 and November 18, 2008; the hearing was then closed and set for decision December 9, 2008, and

WHEREAS, the hearing was reopened on December 9, 2008 to allow a submission by the Department of Transportation (DOT), and then to decision; and

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

WHEREAS, Community Board 12, Bronx, recommends disapproval of this proposal; and

WHEREAS, by letters dated February 21, 2007 and June 21, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated February 27, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that Amended Drainage Plan No. 43-Q (30), dated November 6, 1979, calls for a future 15-inch diameter combined sewer in the unnamed mapped street between Givan Avenue and Wickham Avenue; and

WHEREAS, DEP also notes that Tentative Lots 65 and 66 front an existing 24-inch diameter combined sewer in Wickham Avenue between Givan Avenue and Burke Avenue and a 36-inch diameter combined sewer in Givan Avenue between Bruner Avenue and Wickham Avenue, and there is an existing 20-inch diameter city water main in the bed of the unnamed mapped street; and

WHEREAS, DEP requested that the applicant provide a site plan showing the width of the unnamed mapped street between Wickham Avenue and Givan Avenue and the distance between the existing 20-inch diameter city water main and the proposed development; and

WHEREAS, in response, the applicant submitted a revised site plan indicating that the existing 20-inch diameter city water main is located 15'-11" away from the lot line of Tentative Lots 65 and 66; and

WHEREAS, by letter dated June 22, 2007, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated July 10, 2007, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that, because the proposed development is located at a bend in the intersection of Givan Avenue and Wickham Avenue, and the submitted site plan provides for off-street parking spaces, the proposed development may present an issue of stopping sight distance for vehicles turning at this location; and

WHEREAS, in response, the applicant submitted a traffic analysis study which concluded that the proposed development should not create a hazardous situation because: (i) the proposed driveways would be 89 feet from the intersection of Wickham and Givan Avenues, well in excess of the 50-foot minimum typically required by DOT; (ii) sightlines from the intersection of Wickham Avenue and Givan Avenue are not obstructed; (iii) traffic volume in the area is low; and (iv) multiple stop signs near the subject site would limit the speed

of passing traffic; and

WHEREAS, the Board requested that the applicant investigate the possibility of installing a stop sign near the proposed driveways on the subject site to further ensure that the stopping sight distance presents no traffic hazard; and

WHEREAS, the applicant represents that DOT's traffic sign division has confirmed that, based on the findings of the traffic analysis study, no additional signage is necessary; and

WHEREAS, on October 2, 2007, DOT advised the Board that the northerly extension of the sidewalk now located at the southern end of the subject site will be required along the entire length of the proposed development adjacent to Wickham Avenue to a width of 11'-0"; and

WHEREAS, the applicant submitted a revised site plan incorporating the required sidewalk extension; and

WHEREAS, DOT also notes that the proposed development of the subject site will block the driveway of the adjacent property (Lot 64) and requests that the applicant enter into an easement agreement permitting the owner of Lot 64 vehicular access to Wickham Avenue; and

WHEREAS, in response, the applicant submitted a proposed driveway easement agreement giving the owner of Lot 64 vehicular access to Wickham Avenue; and

WHEREAS, DOT initially recommended maintenance of a pedestrian walkway between Bruner Avenue and Wickham Avenue which bisects the subject site; and

WHEREAS, by letter dated November 28, 2008, DOT rescinded its recommendation that the pedestrian walkway be maintained; and

WHEREAS, correspondence from the Department of Transportation states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, therefore, no transportation improvements requiring the street are contemplated; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated January 19, 2007, acting on New Building Permit Nos. 201088401-01-NB and 201088410-01-NB, is hereby 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 drawings filed with the application marked "Received October 3, 2008 -(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT approval of building permits shall be conditioned on submission of evidence that an easement providing driveway access to the owner of Lot 64 has been executed and recorded with the City Register of the County Clerk;

THAT the lot subdivision is to be as approved by DOB;

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, December 9, 2008.

266-07-A

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

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

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

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

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

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 191-08-BZY (the "BZY Application"), decided the date hereof, which requested a finding by the Board that the owner of the premises has obtained a right to continue construction pursuant to ZR § 11-331; and

WHEREAS, the Board notes that while the court was ordered to hear the BZY Application by judicial order, in the interest of convenience, it heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on this application on May 20, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 9, 2008, after which the hearing was closed and the application was set for decision on October 28, 2008; and

WHEREAS, on October 28, 2008, the hearing was reopened to allow additional submissions by the parties, the hearing was then closed, and the decision was deferred to November 18, 2008; and

WHEREAS, on November 18, 2008, the decision was deferred to December 9, 2008; 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, Community Board 15, Brooklyn recommends disapproval of this application; and

WHEREAS, City Council Member Michael C. Nelson provided a letter to the Board concerning the performance of after-hours construction work by the applicant; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz provided written testimony in opposition to this application; and

WHEREAS, City Council Member Tony Avella testified in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association, represented by counsel, also opposed this application; this group of neighbors was represented by the same counsel in BSA Cal. No. 191-08-BZY; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns with respect to the instant application: (1) that the owner has not undertaken substantial construction; (2) that the owner was aware of the proposed rezoning and therefore did not proceed in good faith; (3) that construction was unsafe and/or shoddy; and (4) the owner disregarded safety requirements and made false statements concerning the amount of work performed; and

WHEREAS, the subject site is located on the south side of Avenue S between East 16th Street and East 17th Street in the Homecrest neighborhood of Brooklyn;

WHEREAS, the site has a frontage of 85 feet and a depth of 95 feet, and a total lot area of 8,075 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story 25-unit residential building with community facility use on the first floor (the "Building"); and

WHEREAS, on January 5, 2006, pursuant to DOB's professional certification program, the owner pre-filed an application for a New Building permit for the proposed development; and

WHEREAS, New Building Permit No. 302054568-01-NB was subsequently obtained by the owner on January 11, 2006, and work commenced; and

WHEREAS, DOB initiated a special audit review of the Permit on January 18, 2006, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on January 20, 2007, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, on February 11, 2006, DOB issued Environmental Control Board Violation No. 34501798P (the "ECB Violation") for a failure to protect the adjoining property during excavation (the "SWO") and ordered that work on the Building be stopped, other than work "to make necessary and safe repairs"; and

WHEREAS, work was performed at the project site under the supervision of DOB inspectors between February 13, 2006 and February 15, 2006; and

WHEREAS, on February 14, 2006, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

WHEREAS, on February 15, 2006 (the "Enactment Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, an inspection conducted on February 15, 2006 mistakenly concluded that all foundation walls and footings were in place in accordance with the plans, leading to the erroneous conclusion that the Permit had vested pursuant to ZR § 11-331; and

WHEREAS, on March 30, 2006, DOB rescinded the revocation and issued a "stop work rescind letter" on April 13, 2006, based on the applicant's resolution of the Objections; and

WHEREAS, the SWO issued in response to the ECB Violation was lifted on April 19, 2006 after a DOB inspection concluded that the foundation work performed had made the site safe; and

WHEREAS, by letter dated May 10, 2006, DOB stated that the permits had vested pursuant to ZR § 11-331 based on the February 15, 2006 inspection report that erroneously concluded that, as of the Enactment Date, all foundation walls and footings were in place in accordance with the plans; and

WHEREAS, on October 15, 2007, a new stop work order was issued based on the finding that the foundations had not in fact been completed as of the Enactment Date and, on October 22, 2007, based on the lapse of the Permit by operation of law, a letter was issued ordering all work to stop; and

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

WHEREAS, DOB approved revised plans on November 18, 2008 that address the objections identified by the second audit and has rescinded the second letter of intent to revoke the Permit on November 21, 2008; and

WHEREAS, at the time the Permit was issued, the site was located within an R6 zoning district; and

WHEREAS, as discussed above, on February 15, 2006, the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements for the former R6 zoning district; specifically, the proposed use as a mixed-use residential/ community facility building with an FAR of 3.0 and a floor area of 26,674 sq. ft., a permitted lot coverage of 80 percent, a perimeter wall height of 66 feet, and a total building height of 70 feet, and no side yards; and

WHEREAS, because the site is now within an R4-1 zoning district, the Building would not comply with the requirements limiting the use to detached or semi-detached one-family or two-family homes and community facility use with a maximum FAR of 1.3, a maximum floor area of approximately 10,500 sq. ft., a maximum perimeter wall height of 25 feet, a maximum building height of 35 feet, and two side yards if the home is detached and one side yard if the home is semi-detached; and

WHEREAS, because the Building violated these provisions of the R4-1 zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

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

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

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

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

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

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

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

WHEREAS, as to substantial construction, the applicant represents that after the issuance of the Permit, the following work was completed (1) 100 percent of the excavation; and (2) pouring of 74 percent of the concrete for the footings and foundation walls; and

WHEREAS, in support of this statement, the applicant has submitted photographs, invoices for labor and material, and affidavits from construction personnel; and

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

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of the representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Opposition argues that substantial construction, as required by the common law, was not undertaken because the east and south walls were not permitted foundation walls, but instead are temporary shoring walls that would need to be replaced; and

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

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

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

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

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

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

WHEREAS, as to costs, the applicant states that 12 percent of the budgeted expenditures for the proposed development were either expended or committed pursuant to irrevocable contracts by the Enactment Date; and

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

WHEREAS, thus, based upon the applicant's representation as to the total project cost and these particular disallowed costs, the Board concludes that the actual construction costs for the proposed enlargement, both soft and hard, approximate $5.9 million; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid $35,540 in project manager and site manager's fees, and $219,502 to the foundation contractor; and

WHEREAS, other costs included $60,000 for the architect and $17,068 to other consultants and engineers; and

WHEREAS, the applicant further states that the owner also irrevocably owed an additional $392,405 in connection with the proposed enlargement, because it had executed binding contracts for work, including $162,000 in outstanding fees to the architect, $183,000 for the project manager, and an additional $51,405 for the foundation; and

WHEREAS, the total of these construction related costs and commitments is approximately $728,515, which means that approximately 12 percent of the construction

related project costs has been expended or committed; and

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

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

WHEREAS, the Board's consideration is again guided by cases considering how much expenditure is needed to vest rights under the prior zoning, as well as the expenditure percentages; and

WHEREAS, as to the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the floor area would be reduced from approximately 26,674 sq. ft. to approximately 10,500 sq. ft. (from an FAR of 3.30 to an FAR of 1.3, including community facility floor area of 0.4); and

WHEREAS, further, the number of residential units that could be developed would be reduced from 25 to eight; and

WHEREAS, the applicant states that this would lead to financial loss because: (1) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and (2) approximately 63 percent of floor area would be lost; and

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

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

WHEREAS, additionally, as noted by the applicant, a new foundation would have to be installed for a complying building, further compounding the economic harm to the owner; and

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

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

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

WHEREAS, the Opposition argues that the instant application must be denied because the applicant was aware of the City's intention to rezone the subject site, citing Pelham View Apts. V. Switzer (224 N.Y.S. 56 (Sup. Ct. 1927)) and Rosenzweig v. Crinnion (139 N.Y.S.2d 172 (Sup. Ct. 1954) for the proposition that property owners who are aware of proposed zoning changes should not be able to take advantage of the vested rights doctrine to escape such changes; and

WHEREAS, the Board notes that these cases are superseded inter alia by the Appellate Division's precedent-setting decision in Kadin v. Bd. of Stds. and Apps. (163 A.D. 2d 308 (2d Dep't 1990), and that ignorance of a zoning change is no longer a condition to the vesting of a permit; and

WHEREAS, the Board further notes that property owners are not barred from attempting to "beat the clock" by commencing foundation construction in advance of a proposed rezoning; and

WHEREAS, the Opposition contends that the foundation walls fail to meet Building Code standards and asserts that the BSA has the authority to deny a claim of common law vesting where shoddy construction is present, citing Steam Heat v. Silva (230 A.D. 800 (2d Dep't 1996)) in support; and

WHEREAS, without accepting the Opposition's assertions regarding the adequacy of the foundation walls, the Board finds that Steam Heat is inapposite to the instant case in three respects: (i) the case is an appeal of a denial of a vesting application filed pursuant to ZR § 11-332, not under the common law; (ii) the denial was based on the lack of evidence of substantial construction, and the flimsiness of the construction was cited as evidence that substantial construction as required by the statute had not been performed; and (iii) the Board has no authority to render a determination on the sufficiency of construction, that is properly within the purview of DOB; and

WHEREAS, the Opposition has argued that, in addition to making the findings concerning work performed, expenditures and serious loss, that New York common law also requires the application of equity principles to a vesting determination by the Board; and

WHEREAS, the Opposition contends that the denial of the instant application is therefore required based on allegedly false statements concerning the amount and type of foundation work performed and the disregard of safety requirements by the applicant, and

WHEREAS, because the Board is an administrative body, rather than a court, it is not empowered to grant equitable relief (see People ex rel. New York Tel. Co. v. Pub. Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd of Stds. and Apps, 45 N.Y.2d 560, 565 (1978)), and therefore cannot consider equitable arguments in connection with an application to vest a building permit under the common law; and

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

WHEREAS, however, the owner has met the test for a common law vested rights determination, and the owner's

property rights may not be negated merely because of general community opposition; and

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

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302054568-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, December 9, 2008.

191-08-BZY

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

SUBJECT – Application July 14, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R4-1 Zoning District.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Deirdre A. Carson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

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

WHEREAS, this application is accompanied by a companion application under BSA Cal. No. 266-07-A, filed at an earlier date, which is a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, the initial filing of the instant application was refused because it failed to accord with the statutory deadline set forth in ZR §11-331; the application was heard pursuant to an order by the New York Supreme Court, County of Kings (captioned 1610 Avenue S, LLC. v. City of New York, Index No. 46374/2007) directing the Board to accept the application; and

WHEREAS, the Board notes that while BSA Cal. No. 266-07-A was filed separately from the instant application, in the interest of convenience, the cases were heard together, and the record is the same for both; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, after which the hearing was closed and the application was set for decision on October 28, 2008; and

WHEREAS, on October 28, 2008, the hearing was reopened to allow additional submissions by the parties, the hearing was then closed, and the decision was deferred to November 18, 2008; and

WHEREAS, on November 18, 2008, the decision was deferred to December 9, 2008; 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, Community Board 15, Brooklyn recommends disapproval of this application; and

WHEREAS, City Council Member Michael C. Nelson provided a letter to the Board concerning the performance of after-hours construction work by the applicant; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz provided written testimony in opposition to this application; and

WHEREAS, City Council Member Tony Avella testified in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association, represented by counsel, also opposed this application; this group of neighbors was represented by the same counsel in BSA Cal. No. 266-07-A; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following concerns: (1) excavation was not complete; (2) substantial progress on the foundation was not complete; (3) the construction did not comply with the approved plans; (4) the construction may be unsafe and/or in violation of the Building Code and therefore "unlawful"; and (5) some construction took place after working hours; and

WHEREAS, the subject site is located on the south side of Avenue S between East 16th Street and East 17th Street in the Homecrest neighborhood of Brooklyn;

WHEREAS, the site has a frontage of 85 feet and a depth of 95 feet, and a total lot area of 8,075 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story 25-unit residential building with community facility use on the first floor (the "Building"); and

WHEREAS, on January 5, 2006, pursuant to DOB's

professional certification program, the owner pre-filed an application for a New Building permit for the proposed development; and

WHEREAS, New Building Permit No. 302054568-01-NB was subsequently obtained by the owner on January 11, 2006, and work commenced; and

WHEREAS, DOB initiated a special audit review of the Permit on January 18, 2006, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on January 20, 2007, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, on February 11, 2006, DOB issued Environmental Control Board Violation No. 34501798P (the "ECB Violation") for a failure to protect the adjoining property during excavation (the "SWO") and ordered that work on the Building be stopped, other than work "to make necessary and safe repairs"; and

WHEREAS, work was performed at the project site under the supervision of DOB inspectors between February 13, 2006 and February 15, 2006; and

WHEREAS, on February 14, 2006, DOB revoked all permits and ordered that work be stopped on the basis that the Objections listed in the Notice of Intent had not been resolved; and

WHEREAS, on February 15, 2006 (the "Enactment Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, an inspection conducted on February 15, 2006 mistakenly concluded that all foundation walls and footings were in place in accordance with the plans, leading to the erroneous conclusion that the Permit had vested pursuant to ZR § 11-331; and

WHEREAS, on March 30, 2006, DOB rescinded the revocation and issued a "stop work rescind letter" on April 13, 2006, based on the applicant's resolution of the Objections; and

WHEREAS, the SWO issued in response to the ECB Violation was lifted on April 19, 2006 after a DOB inspection concluded that the foundation work performed had made the site safe; and

WHEREAS, by letter dated May 10, 2006, DOB stated that the permits had vested pursuant to ZR § 11-331 based on the February 15, 2006 inspection report that erroneously concluded that all foundation walls and footings were in place as of the Enactment Date in accordance with the plans; and

WHEREAS, on October 15, 2007, a new stop work order was issued based on the finding that the foundations had not in fact been completed as of the Enactment Date and, on October 22, 2007, based on the lapse of the Permit by operation of law, a letter was issued ordering all work to stop; and

WHEREAS, on January 16, 2008, DOB issued a second letter of intent to revoke the permit based on a second audit that raised additional objections; and

WHEREAS, DOB approved revised plans on November 18, 2008 that address the objections identified by the second audit and rescinded the second letter of intent to revoke the Permit on November 21, 2008; and

WHEREAS, at the time the Permit was issued, the site was located within an R6 zoning district; and

WHEREAS, as discussed above, on February 15, 2006, the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the Building complies with the Quality Housing Program requirements for the former R6 zoning district; specifically, the proposed use as a mixed-use residential/ community facility building with an FAR of 3.0 and a floor area of 26,674 sq. ft., a perimeter wall height of 66 feet, a total building height of 70 feet, and no side yards; and

WHEREAS, because the site is now within an R4-1 zoning district, the Building would not comply with the requirements limiting the use to detached or semi-detached one-family or two-family homes with a maximum FAR of 0.9, a maximum residential floor area of approximately 8,076 sq. ft., a maximum perimeter wall height of 25 feet, a maximum building height of 35 feet, and two side yards if the home is detached and one side yard if the home is semi-detached; and

WHEREAS, because the Building violated these provisions of the R4-1 zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

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

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

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

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable

amendment to this Resolution;" and

WHEREAS, the record indicates that New Building Permit No. 302054568;-01-NB was issued to the owner by DOB on January 11, 2006 for the proposed building; and

WHEREAS, Section 645(b)(1) of the Charter vests the Commissioner of Buildings with "exclusive power . . . to examine and approve or disapprove plans for the construction or alteration of any building or structure . . .", and

WHEREAS, by a letter submitted in response to a request by the Board, the Department of Buildings has confirmed that the Permit issued was valid when issued; and

WHEREAS, the Board accepts the validity of the Permit when issued; and

WHEREAS, the Opposition contends that the revocation of the Permit prior to the Enactment Date renders the permits void ab initio, and concludes that, since all of the work prior to the zoning change was performed pursuant to an invalid permit, no construction completed prior to February 15, 2006 may be counted toward a vesting pursuant to ZR § 11-331; and

WHEREAS, as discussed above, DOB revoked all permits and ordered that work be stopped on February 14, 2006, on the basis that the Objections listed in the January 20, 2006 Letter of Intent had not been resolved; and

WHEREAS, the applicant subsequently resolved the Objections and on March 30, 2006, DOB rescinded the February 14, 2006 revocation; and

WHEREAS, the Opposition further contends that DOB's rescission of the revocation cannot retroactively validate the Permit, citing BSA Cal. No. 353-05-BZY for the proposition that "once the permit is revoked, the available cure of resolving the outstanding objections in order to prevent revocation and a determination of invalidity is foreclosed;" and

WHEREAS, the Board finds BSA Cal. No. 353-05-BZY to be inapplicable to the instant case; and

WHEREAS, the Board notes that the applicant in the latter case sought to reinstate a permit pursuant to ZR § 11-331 that had been reissued after significant modifications were made to the building plans; and

WHEREAS, because the reissued permit constituted a new permit for vesting purposes, the Board could consider only work performed after the reissued permit was obtained; and

WHEREAS, in the instant case, DOB states that the revocation of the permit on February 14, 2006 was made erroneously and did not affect the underlying validity of the Permit; and

WHEREAS, further, the revocation of the Permit in the instant case was subsequently rescinded; and

WHEREAS, the Board notes that the rescission by DOB renders the prior revocation a nullity because a rescission 'restores the parties to their original rights in regard to the subject matter' (see http://legal-dictionary.thefreedictionary.com/rescission) and, therefore, the Permit would be valid as issued; and

WHEREAS, it is a well-settled principle of law that an agency may not be estopped from correcting its errors (see Parkview Assoc. v. City of New York, 525 N.Y.2d 274, 282(1988)); and

WHEREAS, the Board therefore finds it ironic that the Opposition has applied this principle to DOB's reversal of its vesting determination, stating in a submission that that action was "entirely correct" because "they were entitled to reverse decisions made in error," but nonetheless contends that DOB cannot rescind a revocation of the Permit made in error, and

WHEREAS, DOB further states that the objections raised by its audits have been cured and on November 21, 2008 the agency rescinded the January 16, 2008 letter of intent to revoke; and

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

WHEREAS, in reliance upon DOB's review of the Permit and the subsequent successful resolution of all objections, the Board concludes that the terms and general provisions of ZR §11-31(a) are satisfied and a decision may be rendered provided the other findings are met; and

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

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

WHEREAS, the applicant states that excavation began on January 11, 2006 and was completed January 13, 2006, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, as to excavation, the Opposition asserts that it was not complete since photographs of the site indicated that a mound of earth remained on the Enactment Date that had not been cleared; and

WHEREAS, an affidavit of the on-site engineer states that the entire site was excavated to permit construction of the footings around the entire perimeter of the site but that soil was retained for use as a ramp for access to the site by heavy machinery and to provide a source for clean fill between the shoring and perimeter foundation wall on the three sites of the excavation where a gap existed; and

WHEREAS, accordingly, the Board finds that the retention of soil for a ramp and for foundation fill does not preclude a determination that the excavation was complete; and

WHEREAS, the Board further notes that photographs of the site show rebar below the loose soil, indicating that foundation work had been completed and was subsequently covered by earth; and

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

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation was approximately 74 percent complete as of the Enactment Date; and

WHEREAS, in support of the contention that concrete for

the footings and other foundation components was poured, the applicant has submitted: photographs of the foundations dated from February 3, 2006 through February 15, 2006; affidavits from the contractor, on-site engineer and Building architect; and invoices and canceled checks evidencing payment for the performance of foundation work; and

WHEREAS, further, the applicant submitted a foundation survey showing the completed work, illustrating that foundation walls on all four Building sides have been completed, as well as several footings; and

WHEREAS, an affidavit of the on-site engineer shows that as of February 15, 2006, the date of issuance of the stop work order, concrete was poured for the four footings at the perimeters of the walls, the cross-footing at the north end of the lot, the north wall and for two ten-foot long wings running south from the north wall; and

WHEREAS, according to an affirmation of the Building's architect, the concrete poured prior to issuance of the stop work order represented 48.5 percent of the total needed for completion of the foundation; and

WHEREAS, the Building's architect further states that the inclusion of the south wall which was poured under the supervision of DOB inspectors raises the quantity of concrete poured to 59 percent of the total needed and the inclusion of the eastern and western walls, also poured under DOB supervision, would further raise the total completed to 74 percent; and

WHEREAS, in order to complete the foundation, the applicant states that the owner must construct the remaining footings, comprising 23.9 percent of the concrete to be poured; and

WHEREAS, the applicant states that the work remaining on the foundation would take three weeks to complete, largely due to the time necessary to mobilize the crew; and

WHEREAS, the Opposition asserts that photographs taken on February 11, 2006, while the SWO was in effect, indicate that excavation was not complete and the west and east foundation walls had not been poured; and

WHEREAS, the Opposition contends that the SWO permitted work only on the south wall of the foundation, to protect the property of an adjacent neighbor which had been damaged, but that the applicant impermissibly continued construction on the east and west walls which were not necessary to make the site safe; and

WHEREAS, the applicant states that the concrete poured for the west and east foundation walls was necessary to create a safe support wall that would retain loose soil and stabilize the adjacent property; and

WHEREAS, a submission by DOB states that inspectors who visited the site between February 13, 2006 and February 15, 2006 reported that the poured foundation was necessary to create a safe wall to support the adjacent property and that such work was not in violation of the SWO; and

WHEREAS, the applicant represents that even if work performed while the SWO was in effect were discounted, the amount of work performed prior to its issuance would be sufficient under the law to vest the Permit; and

WHEREAS, at hearing, the Board asked the applicant to provide a breakdown of the amount of concrete poured prior to the issuance of the stop work order; and

WHEREAS, the applicant states that it is unable to provide the concrete pour tickets documenting the dates that concrete was poured because the foundation contractor is no longer in business and four possible suppliers of the concrete poured at the site who were contacted were either unwilling or unable to provide records documenting the work performed; and

WHEREAS, the Opposition contends that the lack of pour tickets calls into question the credibility of the applicant; and

WHEREAS, the Board finds that the foundation work can be sufficiently established by the evidence submitted by the applicant consisting of photographs of the foundation, cancelled checks and affidavits of the project engineer and architect; and

WHEREAS, additionally, the Board notes that, based on a visual inspection of the site, substantial work comparable to the amount performed in other vested rights cases has been performed; and

WHEREAS, the Opposition argues that substantial progress on the foundations, as required by ZR § 11-331 was not completed because the east and south walls are not permitted foundation walls, but instead are temporary shoring walls that would need to be replaced; and

WHEREAS, an affidavit of the on-site engineer states that all four walls were poured pursuant to the approved DOB plans as permanent foundation walls and that the wood lagging and soldier beams of the shoring system are evident because they were used as forms to allow the concrete to be poured as a "one-face" single continuous foundation wall; and

WHEREAS, DOB submitted a report (the "DOB Report"), based on a site inspection conducted on October 6, 2008 at the direction of the Board, stating that the east and the south foundation walls have been completed; and

WHEREAS, the DOB Report also states that that soldier piles are maintained in concrete in the south foundation wall and are maintained and attached to concrete in the east foundation wall; and

WHEREAS, the Opposition contends that the fact that soldier piles are encased or attached to the concrete of the foundation is evidence that the east and south walls are not built according to the approved plan; and

WHEREAS, the applicant submitted an affidavit by an independent structural engineer stating that the east and south walls were constructed in accordance with accepted engineering practice and that the embedding of the soldier beams in the south wall is shown on the shoring plan; and

WHEREAS, the Opposition additionally asserts that "spalling concrete and voids" noted in the DOB Report further support the conclusion that the south wall is not a permanent wall; and

WHEREAS, the affidavit of the structural engineer states that the voids observed in the south wall are minor, can be repaired and do not affect or reflect adversely on the structural integrity of the wall; and

WHEREAS, the DOB Report notes that the thickness of the south wall foundation ranges between 14" and 17" and the thickness of the east foundation wall ranges from 11" to 12"; photographs accompanying the report corroborate the findings; and

WHEREAS, in his affidavit, the consulting engineer states that the variation in the thickness of the east and south walls is not a cause for concern provided that the necessary rebars for those walls were installed; and

WHEREAS, the Board notes that photographs submitted by the applicant show rebar installations on the east and south walls ongoing after footings were poured; and

WHEREAS, the Opposition further contends that "substantial progress" cannot be established because the location of the Building's foundations and footings do not conform to the lot lines of the property and therefore fail to comply with the approved plans; and

WHEREAS, in response to a request by the Board for clarification of the relationship between the foundation footings and walls and the lot line, a submission by the applicant states that the dimensions of the foundation as installed are consistent with the foundation survey submitted by the applicant, which shows the foundation lying with the property lines, as well as with the structural drawings and the sheeting and shoring plan approved by DOB; and

WHEREAS, the Board notes that the DOB Report confirmed that the position of the north, south, east and west foundation walls was consistent with the survey plan and with the Building plan; and

WHEREAS, the applicant states that the only inconsistency between the proposed and the as-built conditions arises from the engineer's decision to erect soldier piles and lagging for the western wall outside the western wall; and

WHEREAS, an affidavit of the engineer stated that the adjustment of the location was required by field conditions; and

WHEREAS, the Opposition additionally argues that the foundation construction is not "lawful in other respects" pursuant to ZR § 11-331 because the applicant cannot produce batch records for controlled inspection testing to certify that concrete core samples at the time of installation met required compression standards; and

WHEREAS, the applicant contends that the failure to retain batch records is a violation of the Building Code and therefore no foundation construction should count toward the "substantial progress" threshold required to vest the permit; and

WHEREAS, at hearing the Board requested the batch and controlled inspection reports for the construction, which the applicant failed to provide; and

WHEREAS, the applicant states, however, that Building Code § 27-598 permits core sampling and testing of hardened concrete, even without batch information, to develop the information necessary to file a controlled inspection report; and

WHEREAS, at hearing, the Board asked a DOB representative whether the agency requires the submission of a certification by a responsible professional that controlled inspections and tests for the foundation work were successfully completed (a "TR form") for the purpose of allowing construction work to continue pursuant to ZR § 11-331; and

WHEREAS, at hearing, the DOB was also asked whether the production of batch and controlled inspection reports is required at the time that such a project vests pursuant to § 11-331 under the agency's authority; and

WHEREAS, a response by DOB states that the certification of the adequacy of the concrete is established only at the time of final sign-off of the permits by the project architect or engineer, prior to the issuance of the certificate of occupancy; and

WHEREAS, DOB further states that a permit would not be rendered invalid in the event that the controlled inspections and tests ultimately revealed that a concrete foundation was inadequate, nor by a failure to submit the certified TR form; and

WHEREAS, the Board notes that DOB had previously vested the Permit, albeit erroneously, without production of batch and controlled inspection reports; and

WHEREAS, the Board further notes that the lack of controlled test inspections, without more, cannot be construed as evidence that such foundation walls fail to meet Building Code standards; and

WHEREAS, because the location of the foundation walls conforms to the approved drawings, and the sufficiency of the concrete is only established at the time of permit sign-off and, further, that the lack of a procedure does not mean that such foundation walls fail to meet the standards of the Building Code, the Board therefore finds that the work performed does not constitute construction that is not "lawful in other respects;" and

WHEREAS, the Opposition has also asserted that the applicant's alleged violation of the federal Occupational Safety and Health Act, work hour and worker safety rules during its construction at the site and its construction outside of business hours also constitutes conduct that is not "lawful in other respects" under ZR § 11-331; and

WHEREAS, the Board notes that regulation of health and safety during construction is not within its purview and, further, that no evidence documenting the alleged violations has been produced; and

WHEREAS, as to allegations of after-hours work, the applicant notes, and the Board agrees, that stamped dates and times of photographs submitted by the Opposition as evidence cannot be relied upon and that the testimony alleging illegal work is vague and conclusory and

WHEREAS, the Board further notes that the Opposition has specifically identified only one day when allegedly illegal after-hours work was performed, on Sunday, December 18, 2005; and

WHEREAS, in response, the applicant states that because of the site's location adjacent to a school which would be closed, asbestos removal was performed that day at the request of the State Department of Environmental Conservation, and was therefore permissible; and

WHEREAS, the applicant has also submitted financial

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

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

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

WHEREAS, while the Board is not swayed by many of the Opposition's arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Homecrest Rezoning and that the Building does not comply with the new zoning parameters; and

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

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

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

Therefore it is Resolved that this application to renew New Building Permit No. 302054568-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on June 9, 2009 this grant and the term shall not prohibit the reinstatement of these permits pursuant to a grant made under BSA Cal. No. 266-07-A.

Adopted by the Board of Standards and Appeals, December 9, 2008.

34-08-A

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

OWNER: North Seven Associates LLC.

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

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

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Kevin Christopher Shea.

For Opposition: Howard Hornstein and Peter Geis.

ACTION OF THE BOARD – Appeal 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:[1]

WHEREAS, the instant appeal comes before the Board in response to a determination of the Brooklyn Borough Commissioner, dated January 24, 2008, to uphold the approval of New Building Permit No. 301784399 permitting the construction of a 16-story mixed-use multiple dwelling; and

WHEREAS, the Final Determination reads, in pertinent part:

> "[t]his responds to the e-mail dated November 27, 2007 for a final determination regarding the validity of the permit issued to 144 N. 8th Street, Brooklyn. Specifically, you raise the issue that approval of the application for a 16-story building requires access to open space, but that the rooftops at 133 North 8th Street, 115 Berry Street and 133-41 North 7th Street are not available to the residents of 144 N. 8th Street for open space. Based on the lack of access to the rooftops, you contend that the application fails to meet the open space requirements of the Zoning Resolution of the City of New York and request that we advise the Board of Standards and Appeals that the issued permit was not valid. . . .
>
> "The permit is valid as it was issued based on approved plans that reflect access to open space on the same zoning lot. While we understand that you are claiming that the residents will not have access to the rooftop spaces, the applicants believed that they did have a right to such access. Upon learning that owners of these rooftops were taking the position that they would not grant access, the Department issued a Stop Work order that limits work beyond the 10th story. If after all the court appeals are concluded the applicant can not guarantee access to the rooftops, the applicant may file a Post Approval Amendment to amend the plans to ten stories, a height that will not need access to the rooftops for purposes of compliance with the open space requirements, or the permit will be revoked.
>
> "This is a final determination that may be appealed to the Board of Standards and Appeals;" and

WHEREAS, a public hearing was held on this appeal on July 29, 2008, after due notice by publication in the *City Record*, with continued hearing on October 7, 2008, and November 18, 2008, and then to decision on December 9,

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

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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by Mary Bartosiewicz, Sandra Cheng, Philip Dray, Philip DePaolo, Joseph Greco, and Sal Perovic, residents of the area surrounding the subject site, and Neighbors Allied for Good Growth, a nonprofit organization with many local members (collectively, the "appellants"); and

WHEREAS, the appeal concerns a development proposed by North Seven Associates, Five M, LLC, and principal Mendel Brach (collectively, the "developer"), and

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

WHEREAS, Assemblyman Joseph R. Lentol provided testimony in support of this appeal; and

WHEREAS, Council Member Tony Avella provided testimony in support of this appeal; and

WHEREAS, representatives of Neighbors Allied for Good Growth, the New York Community Council, and the Greenwich Village Society for Historic Preservation also provided written and oral testimony in support of this appeal; and

THE SITE

WHEREAS, the subject site is located on the south side of North 8th Street, 100 feet east of Berry Street and has a total lot area of 23,620 sq. ft.; and

WHEREAS, the subject site at 144 North 8th Street is proposed to be occupied by a 16-story mixed-use multiple dwelling (alternately, the "Building" and the "subject building") with approximately 77,000 sq. ft. of floor area, including approximately 57,160 sq. ft. of residential floor area and 18,863 sq. ft. of open space; and

WHEREAS, the subject Zoning Lot is also occupied by two existing one-story buildings located at 115 Berry Street and 138 North 8th Street, respectively; and

WHEREAS, the Zoning Lot comprises Tax Lot 11 and Tax Lot 31; and

WHEREAS, Tax Lot 11 is occupied by the Building and Tax Lot 31 is occupied by the two existing buildings located at 115 Berry Street and 138 North 8th Street; and

WHEREAS, prior to 2004, Iqbal, LLC and affiliated entities held full title to the subject site; and

WHEREAS, on January 27, 2004, Iqbal, LLC executed a zoning lot development agreement (a "ZLDA") and a declaration of easements with two affiliated entities ("two affiliated entities") thereby effecting a zoning lot merger of Tax Lot 31 and Tax Lot 11 and the transfer of excess development rights from Lot 31 to Lot 11; and

WHEREAS, on February 1, 2004, Iqbal LLC and its affiliated entities entered into a contract with the developer under which the developer would ultimately succeed to the interest of the two affiliated entities with respect to Tax Lot 11 and would purchase Tax Lot 31 (February 2004 contract"); and

WHEREAS, on November 30, 2004, pursuant to its professional certification program, DOB issued New Building Permit No. 301784399 (the "Permit") permitting construction of the Building; and

WHEREAS, in December 2004, the property transaction contemplated by the February 2004 contract closed, and the developer acquired fee title to Tax Lot 11, as well as the right to all unused floor area from Tax Lot 31; Iqbal LLC and affiliated entities (hereinafter, "Tax Lot 31 owner") held the remaining interest in Tax Lot 31; and

WHEREAS, at the time the Permit was issued, the Building was located in an R6 zoning district; and

PROCEDURAL HISTORY

WHEREAS, as discussed above, the instant appeal concerns the issuance by DOB of New Building Permit No. 301784399 on November 30, 2004 permitting development of a 16-story mixed-use building at the subject site; and

WHEREAS, DOB conducted a special audit review of the Permit and requested certain modifications to the plans; subsequently, on April 22, 2005 DOB re-approved the plans; and

WHEREAS, on May 11, 2005, the City Council adopted the Greenpoint-Williamsburg Rezoning which changed the zoning district of the subject site to R6B; and

WHEREAS, in November 2005, the Tax Lot 31 owner brought suit in Kings County Supreme Court (Iqbal, LLC v. Five M, LLC et al, Sup. Ct., Kings Cty, Index No. 35400/05) against the developer, claiming inter alia that it had not authorized the use of the existing buildings to provide open space for the subject building (the "owner's lawsuit"); and

WHEREAS, the developer filed a counterclaim for a declaratory judgment that it has a right of access to the contested rooftops; and

WHEREAS, on December 30, 2005, DOB issued a Letter of Intent to revoke the permit; the Letter of Intent requested an easement agreement granting access to the open space, in addition to raising other issues; and

WHEREAS, on January 19, 2006, DOB issued a stop work order halting construction of the Building, based on the December 30, 2005 Letter of Intent; and

WHEREAS, the developer submitted a revised zoning analysis excluding floor area that would not be permitted if the disputed open space were unavailable; and

WHEREAS, based on the above, on February 26, 2006, DOB partially lifted the stop work order to permit construction to proceed on the lower ten stories up to a limit of 40,539 sq. ft. in floor area; and

WHEREAS, on December 11, 2007, under BSA Cal. No. 147-07-BZY, the Board approved an application under ZR § 11-332 to extend the time to complete construction under the previous zoning and obtain a certificate of occupancy for the Building; and

WHEREAS, on January 24, 2008, the Brooklyn Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on February 20, 2008, the appellants filed the instant appeal at the BSA; and

ISSUES PRESENTED

WHEREAS, the appellants contend that the Building violates the open space requirements of the Zoning Resolution, as set forth in ZR §§ 23-142 and 12-10 and, therefore, that the Permit should be revoked; and

WHEREAS, the appellants make the following primary arguments in support of their position that the proposed Building violates the Zoning Resolution: (i) the open space will not be usable and accessible to the occupants of the subject building; (ii) the occupants of the Building have no legal right of access to the proposed open space; and (iii) physical limitations preclude the use of the proposed open space; and

WHEREAS, these three arguments are addressed below; and

WHEREAS, the appellants contend that DOB failed to ensure that open space sufficient to support the Building's floor area that is usable and accessible to the occupants, as required by the Zoning Resolution, is provided on the Zoning Lot and therefore, the Permit should be revoked; and

WHEREAS, ZR § 23-142 provides that the permissible floor area of a building is dependent on the amount of open space provided on its zoning lot and imposes a minimum open space ratio of 33.0 for the proposed residential development in an R6 zoning district; and

WHEREAS, the Building is proposed to provide 57,160 sq. ft. of residential floor area, thereby requiring 18,863 sq. ft. of open space on the Zoning Lot; and

WHEREAS, it is undisputed that the square footage of the proposed open space complies with the requirements of ZR § 23-142; and

WHEREAS, ZR § 12-10(b) provides that open space must be "accessible to and usable by all persons occupying a dwelling unit . . . on the zoning lot," and

WHEREAS, the appellants contend that issuance of the Permit violates ZR § 12-10(b) because DOB failed to ensure that the open space on the subject site will be accessible to the Building occupants; and

WHEREAS, according to the plans approved in connection with the Permit, a substantial portion of the required open space is located on the adjoining rooftops of 115 Berry Street and 138 North 8th Street; and

WHEREAS, the appellants argue that where open space is provided on an adjoining tax lot in separate ownership, a recorded easement or restrictive declaration ensuring access to the space is required before a permit can be issued and that without such a document, open space will not be maintained that is usable and accessible to the occupants of the Building, and the permit would be invalid; and

WHEREAS, to determine compliance with open space requirements, DOB relies on an applicant's floor area calculations and drawings; and

WHEREAS, DOB asserts that the Permit is valid because the Building application demonstrates the required amount of open space on the Zoning Lot and compliance with the open space requirements of ZR §§ 23-142 and 12-10; and

WHEREAS, DOB further asserts that the reference in ZR § 12-10(b) to 'accessible and usable space' is satisfied by a design and layout, as reflected in the drawings, showing the physical means of gaining entry to the space, and by the documents establishing that the zoning lot was created in accordance with ZR § 12-10(d); and

WHEREAS, the appellants contend that, since no legal document was provided to DOB ensuring that the proposed open space on the two existing buildings will be maintained as usable and accessible to the occupants of the Building, the Permit must be revoked; and

WHEREAS, DOB states that satisfying the requirement that open space be accessible and usable is not dependent on a demonstration of a legal right of entry, and therefore does not require submission of a recorded easement or restrictive declaration prior to the issuance of a permit; and

WHEREAS, DOB further states that neither the Zoning Resolution nor agency practice requires an applicant to provide an additional guarantee that open space will always be made available to occupancy; and

WHEREAS, DOB notes, for example, that the Zoning Resolution does not require an applicant to ensure the public's right of access to public plazas as a precondition to the issuance of a permit on a zoning lot with multiple buildings; and

WHEREAS, the Board notes that confirmation by a DOB inspector of compliance with open space requirements is a precondition to the issuance of a certificate of occupancy after construction; and

WHEREAS, at hearing, the appellants conceded that ZR § 12-10 does not require submission of an easement agreement; and

WHEREAS, the appellants nonetheless contend that the lack of a written easement evidencing access to the open space violates DOB's Legal Policy and Procedure Notice ("LPPN") 1/042; and

WHEREAS, LPPN 1/04 sets forth procedures and requirements for the filing, review, approval and documentation of proposed easement agreements and restrictive declarations which provide for alternate means of compliance with code requirements; and

WHEREAS, the Board notes that, by its terms, LPPN 1/04 applies only to restrictive declarations that are required "for alternate means of compliance with code requirements;" and that the Permit application did not propose an alternate means of compliance with open space requirements; and

WHEREAS, because the proposed Building Plans did not call for an alternate means of compliance, LPPN 1/04 would therefore not apply to the instant case; and

WHEREAS, the appellants also argue that because DOB had requested a recorded easement granting access to the open space in its December 30, 2005 Letter of Intent, that such an easement was therefore required to demonstrate compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, DOB states that although the agency had requested an easement agreement, it subsequently determined that an easement was not required to demonstrate compliance;

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2 Although appellants refer to LPPN 1/04, and this resolution therefore addresses the claims pertaining to such document, this DOB directive has been superseded by LPPN 1/05.

and

WHEREAS, the Board notes that no legislative mandate may be imputed from DOB's request, absent a specific requirement in the Zoning Resolution; and

WHEREAS, the appellants additionally contend that DOB should have required execution of a restrictive declaration prior to issuing a permit that relies on open space located on the rooftop of another building on the same Zoning Lot, citing the recent decision in Matter of 9th and 10th St. LLC v. Bd. of Stds. and Appeals (10 N.Y. 3d 264 (2008); 2008 NY Slip Op. 02678 (upholding DOB's denial of a building permit for a proposed dormitory that lacked an established connection to a school based on reasonable doubt that the building would be used lawfully)); and

WHEREAS, in 9th and 10th Street, DOB required a restrictive declaration prior to the issuance of a permit because a non-complying residential use could not be distinguished from the permitted dormitory use on the approved plans and, in the absence of a proven institutional nexus, DOB could not establish compliance with the Zoning Resolution; and

WHEREAS, the denial of a permit by DOB in the latter case was upheld based on the applicant's failure to proffer evidence establishing an intent to use the building in a manner consistent with the permitted dormitory use; and

WHEREAS, DOB states that a restrictive declaration is unnecessary in the instant case because the approved plans alone clearly establish compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, the Board finds that the Appellant's reliance on 9th and 10th St. LLC. is therefore misplaced because the holding was limited to the specific facts of that case; the Court set forth no general rule requiring similar documentation with respect to compliance with other Zoning Resolution requirements that would be applicable to the instant case; and

WHEREAS, the Board notes that the type and form of information provided to DOB in connection with the Permit application is consistent with DOB practice with respect to similar developments; and

WHEREAS, the Board further notes that the appellants have identified no other instances in which an easement or restrictive declaration was required prior to the issuance of a building permit; and

WHEREAS, the appellants argue that the Board should require the execution of a restrictive declaration or easement ensuring access to the open space to ensure that it remains accessible to Building occupants; and

WHEREAS, it is not a legislative body, the Board does not have the power to, in effect, amend or modify the Zoning Resolution to condition the validity of the Permit on the execution of a restrictive declaration when such a requirement is not expressly or impliedly authorized by the Zoning Resolution or other statute (see Vit-Al Bldg. Corp. v. Eccleston, 7 A.D.2d 737 (2d Dept' 1958); Pearson v. Shoemaker, 25 Misc.2d 591 (Sup. Ct. 1960)); and

WHEREAS, the Board further notes that implicit in the Appellant's argument is the notion that the Permit ought to be revoked based on the purported future non-compliance of the Building; and

WHEREAS, DOB is prohibited from denying a permit based on a speculative future illegal use (see Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep't 1989) ("[t]he standard to be applied herein is the actual use of the building in question, not its possible future use")); and

WHEREAS, the appellants additionally contend that the Tax Lot 31 owner has not authorized use of its property as open space and, therefore it is not accessible and usable by residents of the subject building in violation of ZR § 12-10; and

WHEREAS, the appellants argue that the owner's objection to access to the rooftops of the existing buildings invalidates the Permit, citing Bun & Burger of Rockefeller Plaza, Inc. v. New York City Dept. of Bldgs., (111 A.D.2d 140 (1st Dep't 1985) ("Bun & Burger")); and

WHEREAS, the Board notes that Bun & Burger, which concerns the inability of DOB to issue a permit to a lessee based on a permit application that is unauthorized by an owner, is inapplicable to the issue of access to open space presented by the instant case; and

WHEREAS, furthermore, at hearing DOB testified that the Tax Lot 31 owner did not contest the authorization of the Permit; and

WHEREAS, the appellants further assert that a right of access to the rooftops of the existing buildings is among the issues currently being litigated by the developer and the Tax Lot 31 owner and, absent a judicial resolution in favor of the developer, Building residents have no right to access to the proposed open space; and

WHEREAS, the appellants argue that because compliance with the open space requirements of ZR §§ 23-142 and 12-10 cannot be established until the owner's lawsuit is resolved, the Permit is therefore invalid; and

WHEREAS, appellants further argue that, in the event the parties settle the owner's lawsuit by signing an agreement to allow access, the Permit will have contained a defect at the time of its issuance because its validation by the litigation means that it was therefore invalid when issued; and

WHEREAS, the Board notes that, as the lawfulness of the Permit is dependent on the compliance of the Building plans with the requirements of the Zoning Resolution at the time of its issuance, the outcome of subsequent litigation is therefore irrelevant; and

WHEREAS, the appellants also argue that DOB had no right or authority to issue a partial lift to the SWO allowing construction to proceed up to ten stories and 40,539 sq. ft.; and

WHEREAS, litigation is ongoing as to the rights provided by the ZLDA and purchase agreement, DOB considered it prudent to limit development to the height which would be permissible absent the open space component provided by the two contested rooftops; and

WHEREAS, because the issue before the Board concerns only the lawfulness of the issuance of the Permit, the propriety of DOB's actions subsequent to its issuance are not properly before it; and

WHEREAS, notwithstanding the foregoing, the Board notes that the New York City Charter and Administrative Code

invest DOB with broad enforcement powers providing the necessary authority to partially lift the stop work order on the Building; and

WHEREAS, the Board further notes that neither the imposition of the stop work order nor its partial lift necessarily implicate the validity of the Permit at the time of its issuance; and

WHEREAS, the Board finds that the Building plans and recorded zoning lot declaration are sufficient to establish compliance with the open space requirements under the Zoning Resolution and that submission to DOB of a recorded easement agreement or restrictive declaration ensuring access to the rooftops of the existing buildings prior to the issuance of the Permit is not required; and

WHEREAS, the appellants also argue that physical limitations of the rooftops of the existing buildings preclude their use as open space and, therefore, that the approved Building plans cannot establish compliance with the open space requirements; and

WHEREAS, the appellants contend that the Building plans are defective because portions of the proposed open space are presently encumbered with parapet walls, mechanical equipment and skylights; and

WHEREAS, the appellants further contend that the Building plans propose a roof terrace that is infeasible and fail to show guardrails and other architectural features necessary to maintain the safety of open space users; and

WHEREAS, the developer states that DOB-approved plans represent future conditions and while the rooftops of the existing buildings may not presently comport with open space requirements, they must be in compliance before a certificate of occupancy can be issued; and

WHEREAS, the developer further states that building plans often contain requirements pertaining to parking, rooftop recreation space and plantings that rarely exist at the time of plan approval; and

WHEREAS, DOB testified at hearing that prior to the issuance of a certificate of occupancy, an inspector will verify that the open space is accessible to and usable by the occupants of the Building; and

WHEREAS, the Board therefore finds that existing physical conditions of the rooftops of the existing buildings do not establish non-compliance with the open space requirements of the Zoning Resolution; and

WHEREAS, the appellants also contend that the Zoning Lot was not properly formed and therefore cannot establish a right of access to the rooftops of the existing buildings; and

WHEREAS, at hearing the Board asked DOB to confirm that the Zoning Lot had been properly formed; and

WHEREAS, a submission by DOB confirms that the applicant has submitted all documents required to establish that the Zoning Lot was created in accordance with ZR §12-10(d), including a recorded zoning lot declaration executed by the fee owners of the lots as named in a title insurance company certification; and

WHEREAS, the appellants argue that these documents do nothing more than establish the existence of a zoning lot merger, and that DOB has an affirmative obligation to analyze the documents to ensure that their terms do not interfere with access to open space; and

WHEREAS, DOB states, and the Board agrees, that when a fully formed zoning lot is presented as part of a development application, the agency has a duty to confirm that the proposed floor area is consistent with the requirements of the zoning for the district, but is not required to analyze the underlying contractual agreement between the owners of the tax lots comprising the Zoning Lot; and

WHEREAS, in their final submission, Appellants raise additional concerns regarding (i) a purported failure to require a separate application for Tax Lot 31; (ii) issues with authorization of a different permit on the Zoning Lot; (iii) questions regarding the necessity to amend the certificates of occupancy for the two existing buildings; and (iv) discrepancies with the floor plans; and

WHEREAS, appellants fail to explain the relevance of these issues to the question presented by the appeal; these issues are therefore not addressed herein; and

WHEREAS, the Board finds that the instant appeal presents no evidence that DOB violated any law or regulation; and

WHEREAS, the Board concludes that the plans for construction of the subject building under New Building Permit No. 301784399 met the requirements for open space under ZR §§ 23-142 and 12-10 when the Permit was issued; and

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Brooklyn Borough Commissioner, dated January 24, 2008, and a revocation of New Building Permit No. 301784399, is hereby denied.

Adopted by the Board of Standards and Appeals, December 9, 2008.

211-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, owner; Trish & Thomas Ecock, lessee.

SUBJECT – Application August 15, 2008 – Proposed reconstruction and enlargement of existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing legal non conforming private disposal system in the bed of the mapped street and Service road. R4 Zoning District.

PREMISES AFFECTED – 434 Oceanside Avenue, north side Avenue at the intersection of mapped Beach 211th Street, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410121522, reads in pertinent part:

"A1- The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.

A2- The proposed upgraded private disposal system is in the bed of a mapped street contrary to General City Law Article 3, Section 35 and Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on December 9, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

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

WHEREAS, by letter dated September 4, 2008, the Department of Environmental Protection (DEP) stases that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 16, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410121522, 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 August 15, 2008" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, December 9, 2008.

231-08-A

APPLICANT – Gerard E. Meyer, for Breezy Point Cooperative Inc., owner; Stephen D'Antonio, lessee.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning

PREMISES AFFECTED –118 Beach 221st Street, southwest side of Beach 221st Street, 320'southeast of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 11, 2008, acting on Department of Buildings Application No. 410124887, reads in pertinent part:

"A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

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

B. Existing dwelling as altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space, contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Buildings policy;" and

WHEREAS, a public hearing was held on this application on December 9, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 1, 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 August 11, 2008, acting on Department of Buildings Application No. 410124887, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 9, 2008 " – one (1) sheet; that the proposal shall comply with all applicable zoning district

requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, December 9, 2008.

115-07-A & 116-07-A

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application May 10, 2007 – Proposed construction of four one family homes located within the bed of a mapped street (Ramona Avenue) contrary to Section 35 of the General City Law. R3-X SSRD Zoning District.

PREMISES AFFECTED – 310 & 335 Ramona Avenue, Ramona Avenue and Huguenot Avenue, Block 6836, Lot 63 (tent 55 & 59), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil Rampulla.

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 December 16, 2008 at 10 A.M., for decision, hearing closed.

56-08-A & 57-08-A

APPLICANT – Rampulla Associates Architects, for Frank Maisano, owner.

SUBJECT – Application March 14, 2008 – Proposed construction of four single family detached homes located within the bed of a mapped street contrary to General City Law Section 35. R3X- SSRD, SGMD Zoning Districts.

PREMISES AFFECTED – 322 & 328 Ramona Avenue, south side of Ramona Avenue 140' west of Huguenot Avenue, Block 6836, Lot 63 (tent 57), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil Rampulla.

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 December 16, 2008 at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 11:00: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 9, 2008
1:30 P.M.

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

ZONING CALENDAR

178-08-BZ
APPLICANT – Eric Palatnik, P.C., for Igor Yanovsky, owner.
SUBJECT – Application July 9, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, lot coverage and open space (§23-141(b)) and less than the minimum side yards (§23-461) in an R3-1 zoning district.
PREMISES AFFECTED – 153 Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
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 June 9, 2008, acting on Department of Buildings Application No. 310142002, reads in pertinent part:

"1. ZR 23-141(b) – The proposed total floor area exceeded the permitted [floor area]
2. ZR 23-141(b) – The proposed lot coverage exceeded the permitted [lot coverage]
3. ZR 23-141(b) – The proposed open space is inadequate
4. ZR 23-461 – The proposed side yards are contrary to those permitted;"

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

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2008 and November 25, 2008, and then to decision on December 9, 2008; and

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

WHEREAS, residents of the Manhattan Beach community provided testimony in opposition to the proposal; and

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

WHEREAS, the subject site has a total lot area of approximately 2,500 sq. ft., and is occupied by a single-family home with a floor area of approximately 950 sq. ft. (0.37 FAR); and

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

WHEREAS, the applicant seeks an increase in floor area from approximately 950 sq. ft. (0.37 FAR) to approximately 2,190 sq. ft. (0.87 FAR); the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides lot coverage of 37 percent (a maximum of 35 percent is permitted) and open space of 63 percent (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement maintains an existing non-complying side yard with a width of 4'-4¾" along the northern lot line and an existing non-complying side yard with a width of 1'-2" along the southern lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, at hearing, the Board raised concerns regarding the amount of the existing building that would be retained as part of the proposed enlargement; and

WHEREAS, specifically, the Board questioned whether: (i) the existing one-story building would be able to support the proposed enlargement; (ii) the applicant's proposal to raise the existing floor was necessary; and (iii) a cellar could be provided without removing the existing floor at grade; and

WHEREAS, in response, the applicant submitted photographs and an affidavit from the architect indicating that the existing home was a reinforced concrete structure that would be able to support the proposed enlargement; and

WHEREAS, in addition, the applicant states that the first floor must be elevated in order to provide a cellar with adequate head room and avoid building below the water table; and

WHEREAS, in support of its assertion, the applicant submitted boring testings indicating a water table at a depth of 6'-6" for the subject site; and

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, FAR, lot coverage, open space, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 14, 2008" – (11) sheets and "November 10, 2008" – (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of approximately 2,190 sq. ft. (0.87 FAR); a lot coverage of 37 percent; an open space of 63 percent; a side yard of 4'-4 ¾" along the northern lot line and a side yard of 1'-2" along the southern lot line, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, December 9, 2008.

199-08-BZ
CEQR #09-BSA-013X
APPLICANT – Rizzo Group, LLP, for Acadia PA East Fordham Acqustns, LLC, owners; 24 Hour Fitness USA, Inc., lessee.
SUBJECT – Application July 28, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the third floor in an existing 14-story mixed-use building. The proposal is contrary to ZR §32-10. C4-4 district.
PREMISES AFFECTED – 400 East Fordham Road (aka 2506-2526 Webster Avenue/4747-4763 Park Avenue). Block 3033, Lot 12, Borough of Bronx.
COMMUNITY BOARD #6BX
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, a decision of the Bronx Deputy Borough Commissioner, dated July 15, 2008, acting on Department of Buildings Application No. 200999571, reads in pertinent part; and

"Respectfully request a reconsideration to create a physical culture establishment pursuant to ZR § 32-30 uses permitted by special permit;"

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the establishment of a physical culture establishment (PCE) on the third floor of a 14-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 9, 2008; and

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

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

WHEREAS, the subject site occupies a through lot located on the east side of Webster Avenue and the west side of Park Avenue between East 189th Street and East Fordham Street; and

WHEREAS, the site is occupied by a 14-story mixed-use building; and

WHEREAS, the PCE will occupy a total of 28,416 sq. ft. of floor area on the third floor; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the PCE will operate 24 hours per day; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA013X, dated July 3, 2008; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the establishment of a physical culture establishment on the third floor of a 14-story mixed-use building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 6, 2008"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 9, 2018;

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

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

THAT the above conditions shall appear on the 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, December 9, 2008.

119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39th Street, northern side of 39th Street, midblock between 4th Avenue and 5th Avenue, Block 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

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 January 27, 2009 at 10 A.M., for decision, hearing closed.

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

135-08-BZ
APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.
SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.
PREMISES AFFECTED – 71-52 172nd Street, northwest corner of the intersection of 73rd Avenue and 172nd Street, Block 6959, Lot 1, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Richard Lobel.
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 January 13, 2009 at 10 A.M., for decision, hearing closed.

170-08-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.
SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.
PREMISES AFFECTED – 411-431 East 69th Street, block bounded by East 69th and East 70th Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Gary T. Tarnoff, Samuel Lindenbaum and James Power.
For Opposition: Jerry Andreozzi and William Spitz.
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 January 13, 2009 at 10 A.M., for decision, hearing closed.

224-08-BZ
APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.
SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.
PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47th Street, to the west and 48th Street to the east, Block 2305, Lot 22, Borough of Queens.
COMMUNITY BOARD #2Q
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 January 13, 2009 at 10 A.M., for decision, hearing closed.

45-08-BZ
APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.
SUBJECT – Application February 29, 2998 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.
PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Phil L. Rampulla, Henry Salmon, John Vokral, Deborah Ippolito, Joyce Gilberti and Raymond Masucci.
ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

201-08-BZ
APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.
SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X district.
PREMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES –
For Applicant: Adam W. Rothkrug and Richard F. Alexander.
For Opposition: Councilmember Tony Avella, Gerda Soria, Tom Buscher and Kathleen Cronin.
ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

223-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.
SUBJECT – Application August 29, 2008 –Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.
PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreischer Street, Block 7596, Lot 250, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Adam W. Rothkrug.

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

234-08-BZ
APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.
SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.
PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Adam W. Rothkrug

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

244-08-BZ
APPLICANT – Rizzo Group, for BP/CGCenter II, LLC, owner; 24 Hour Fitness USA, Inc., lessee.
SUBJECT – Application October 1, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar level and first floor in a 59-story building. The proposal is contrary to ZR §32-10. C6-6 district.
PREMISES AFFECTED – 139-153 East 53rd Street; 140-16 East 54th Street; 601-635 Lexington Avenue; 884-892 3rd Avenue, north side of 53rd Street, between 3rd and Lexington Avenues, Block 1308, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #6M
APPEARANCES –
For Applicant: Kenneth Barbino.
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 January 13, 2009 at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.