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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

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Volume 93, Nos. 49-51

December 25, 2008

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### DIRECTORY

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### CONTENTS

DOCKET .....	859
<b>CALENDAR</b> of January 27, 2009	
Morning .....	860
Afternoon .....	861

# CONTENTS

**MINUTES of Regular Meetings,  
Tuesday, December 16, 2008**

Morning Calendar .....862

**Affecting Calendar Numbers:**

736-45-BZ	3740 Broadway, Manhattan
863-48-BZ	259-16 Union Turnpike, Queens
719-56-BZ	2525 Victory Boulevard, Staten Island
337-90-BZ	1415/17 East 92 <sup>nd</sup> Street, Brooklyn
239-97-BZ	1499 Bruckner Boulevard, Bronx
115-07-A & 116-07-A	310 & 335 Ramona Avenue, Staten Island
251-07-A thru 254-07-A	63/65 Houston Street and 104/106 Willowbrook Road, Staten Island
200-08-A	171 Bayside Drive, Queens
204-08-A	26 Roosevelt Walk, Queens
205-08-A	32 Tioga Walk, Queens
232-08-A	50 Tioga Walk, Queens
233-08-A	56 Hillside Avenue, Queens
240-08-A	167 Bayside Drive, Queens
70-08-A thru 72-08-A	215C, 215B, 215A Van Name Avenue, Staten Island
73-08-A thru 75-08-A	354 Van Name Avenue, Staten Island
103-08-BZY	208 Grand Street, Brooklyn
120-08-A	186 Grand Street, Brooklyn
149-08-A	808 Columbus Avenue, Manhattan
168-08-A	63 Brighton 2 <sup>nd</sup> Place, Brooklyn
261-08-BZY & 262-08-A	140-75 Ash Avenue, Queens
263-08-BZY & 294-08-A	29-23 40 <sup>th</sup> Road and 30-02 40 <sup>th</sup> Avenue, Queens

Afternoon Calendar .....874

**Affecting Calendar Numbers:**

205-07-BZ	53-20 72 <sup>nd</sup> Place, Queens
51-08-BZ	511 Avenue R, Brooklyn
175-08-BZ	141 Allen Street, Manhattan
195-08-BZ	1350 East 27 <sup>th</sup> Street, Brooklyn
225-08-BZ	1155 East 24 <sup>th</sup> Street, Brooklyn
203-07-BZ	137-35 Elder Avenue, Queens
20-08-BZ	53-55 Beach Street, Manhattan
46-08-BZ	491 Bedford Avenue, 142 Clymer Street, Brooklyn
155-08-BZ	282 Beaumont Street, Brooklyn
159-08-BZ	68-70 Spring Street, Manhattan
162-08-BZ	150 East 93 <sup>rd</sup> Street, Manhattan
198-08-BZ	268 Park Avenue, Manhattan
206-08-BZ	737 Elvira Avenue, Queens
226-08-BZ	172 Empire Boulevard, Brooklyn
230-08-BZ	1019 East 23 <sup>rd</sup> Street, Brooklyn
250-08-BZ	1925 East 5 <sup>th</sup> Street, Brooklyn
251-08-BZ	2153 Ocean Parkway, Brooklyn

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# DOCKETS

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New Case Filed Up to December 16, 2008  
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**301-08-BZ**

2717 Quentin Road, Quentin Road between East 27 and East 28 Street (approximately 50' west of East 28th), Block 6790, Lot(s) 32, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (23-141), side yard (23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard (23-47) in an R3-2 zoning district.  
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**302-08-BZ**

4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue., Block 5047, Lot(s) 12, Borough of **Bronx, Community Board: 12**. Variance to allow a three-story, three family building, contrary to use and bulk regulations.  
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**303-08-BZ**

34-67 Francis Lewis Boulevard, Northeast corner of 35th Avenue, Block 6077, Lot(s) 43, Borough of **Queens, Community Board: 11**. Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.  
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**304-08-BZ**

312-318 East 95th Street, South side of 95th Street, 215 ft. east of Second Avenue, 350 ft. west of First Avenue., Block 1557, Lot(s) 41, Borough of **Manhattan, Community Board: 8**. Variance pursuant to 72-21 and Special Permit pursuant to 73-19 to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.  
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**305-08-A**

East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane., Block 36, Lot(s) 25 & 30, Borough of **Manhattan, Community Board: 1**. Application seeking a variance of the Flood Plain regulations under Section G 107 of Appendix G of the NYC Building Code.  
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**306-08-BZ**

969 Third Avenue, Southeast corner of the intersection formed by Third Avenue and East 58th Street., Block 1331, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR Section 32-10. C5-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JANUARY 27, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 27, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**241-47-BZ**

APPLICANT – Sheldon Lobel, P.C., for Marin Vajanc, owner.

SUBJECT – Application July 24, 2008 – Extension of Term and Amendment filed pursuant to §§11-411 & 11-413 requesting an extension of the variance previously granted by the Board of Standards and Appeals which expired on January 29, 2004. The application seeks a change in use from knitting mill (Use Group 17) to a contractor's establishment (Use Group 17). The site is located in an R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, West side of Hancock Street approximately 245' north of Wycoff Street, Block 3548, Lot 97 Borough of Queens.

**COMMUNITY BOARD #5Q**

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**889-55-BZ**

APPLICANT – J & H Management Corporation, owner.

SUBJECT – Application October 22, 2008 – Application filed pursuant to § 11-411 to extend the term of Automotive Repair Facility for 10 years which expired on May 1, 2008. The application seeks a Waiver of the Rules of Practice and Procedure for an Extension of Time to obtain a Certificate of Occupancy. The subject site is located in a C1-2/R3-2 zoning district.

PREMISES AFFECTED – 69-15 164<sup>th</sup> Street, Block 9631, Lot 38, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**885-78-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.

SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.

PREMISES AFFECTED – 120 West 25<sup>th</sup> Street, south side of West 25<sup>th</sup> Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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**124-99-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for BLDG Management Company, Incorporated; New York

Sports Club, lessee.

SUBJECT – Application November 8, 2008 – Extension of the term of a previously granted special permit allowing the operation of a physical culture establishment health club in portions of the cellar and first floor of an existing twenty story commercial building located in a C6-6 (Mid) zoning district.

PREMISES AFFECTED – 1372 Broadway, Easterly side of Broadway between West 37<sup>th</sup> and West 38<sup>th</sup> Streets, Block 813, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**51-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the operation of a PCE in a portion of the cellar and the legalization of a dance studio in the cellar and first floor of an existing commercial building, in an C1-2/R2 zoning district, which expired on December 12, 2008.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike between 188<sup>th</sup> and 189<sup>th</sup> Street, Block 7266, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**APPEALS CALENDAR**

**153-08-A & 154-08-A**

APPLICANT – Philip L. Rampulla, for Richard Salomone, owner.

SUBJECT – Application May 30, 2008 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District

PREMISES AFFECTED – 156 & 150 Forest Road, northwest of Dalemere Road, Block 869, Lots 50, 63 (Tent. 54,52), Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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# CALENDAR

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**JANUARY 27, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 27, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **284-07-BZ**

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee. SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to section 32-10. C6-1 district.

PREMISES AFFECTED – 52-54 East 13<sup>th</sup> Street, south side of East 13<sup>th</sup> between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### **161-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **215-08-BZ**

APPLICANT – Davidoff Malito & Hutcher, LLP by Howard S. Weiss, for SoBRO Development Corp., owners.

SUBJECT – Application August 20, 2008 – Variance (§72-21) to allow a new ten (10) story mixed-use building containing ninety eight (98) dwelling units and ground floor retail use; contrary to use regulations (§32-00). C8-3 district.

PREMISES AFFECTED – 1778-1800 Southern Boulevard, intersection of East 174<sup>th</sup> Street, Boston Post Road and Southern Boulevard, Block 2984, Lots 1 & 7, Borough of Bronx.

**COMMUNITY BOARD #3BX**

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### **227-08-BZ**

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application September 3, 2008 – Variance (§

72-21) to allow a 39,922 square foot enlargement to an existing non-profit hospital (UG 4); contrary to bulk regulations (§24-11, §23-633, §122-30). R8 District / Special Grand Concourse Preservation District.

PREMISES AFFECTED – Grand Concourse, East 173<sup>rd</sup> Street, Selwyn Avenue, Mt. Eden Parkway, Block 2823, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 16, 2008  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**736-45-BZ**

APPLICANT – Walter T. Gorman, P.E., for Midel Property Associates, LLC, owner; Exxon Mobil Corporation, lessee.  
SUBJECT – Application June 3, 2008 – Extension of Term/waiver for a previously granted variance for the operation of a gasoline service station (Mobil), in a C2-4/R8 zoning district, which expired on March 17, 1999 and an Extension of Time to obtain a Certificate of Occupancy which expired on May 8, 2000.

PREMISES AFFECTED – 3740 Broadway, northeast corner of West 155<sup>th</sup> Street, Block 2114, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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 and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a gasoline service station with accessory uses, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 7, 2008 after due notice by publication in *The City Record*, with a continued hearing on November 25, 2008, and then to decision on December 16, 2008; and

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

WHEREAS, the site is located on the northeast corner of the intersection at Broadway and 155<sup>th</sup> Street, within an R7 (C2-4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 25, 1949 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station, lubritorium, auto laundry, and office; and

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

WHEREAS, most recently, the grant was extended on May 8, 1990 for a term of ten years from the expiration of the prior grant; and

WHEREAS, the term expired on March 17, 1999; the applicant states that the gasoline service station has operated continuously since the expiration of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; 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 southwest portion of the service building to an accessory convenience store; and (ii) the installation of a handicap access ramp in front of the convenience store; 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 convenience store is contained within a completely enclosed building; and (ii) the 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, at hearing the Board asked the applicant to clarify who owned the two public pay telephones located at the subject site, whether they were located on the City sidewalk or on the owner's property, and whether they were properly licensed; and

WHEREAS, in response, the applicant submitted a letter from the Department of Information Technology & Telecommunications ("DOITT") indicating that the telephones are located on the City sidewalk and are owned by TCC-Teleplex, which has a franchise with the City to operate the telephones; and

WHEREAS, the Board notes that the New York State Department of Environmental Conservation ("DEC") recorded an active spill at this site, identified as Spill No. 8910288; DEC has issued a separate spill number for 3750 Broadway, identified as Spill No. 0109628, which is an apartment building affected by the release at 3740 Broadway; and

WHEREAS, in response, the applicant represents that a vapor abatement system has been operating at 3750 Broadway since 2002 to remove hydrocarbon vapors in the basement of the apartment building and will remain in operation until DEC determines that Spill Nos. 8910299 and 0109628 can be closed out; and

# MINUTES

WHEREAS, additionally, the applicant represents that a new remediation system will begin in the first quarter of 2009; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 25, 1949, so that as amended this portion of the resolution shall read: "to extend the term for an additional ten years from March 17, 1999, to expire on March 17, 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 June 3, 2008"--(6) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 17, 2009;

THAT all signage shall comply with C2 zoning district regulations;

THAT all conditions from prior resolutions 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. 110116650)

Adopted by the Board of Standards and Appeals December 16, 2008.

## 863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.  
SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.

PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259<sup>th</sup> Street, Block 8678, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte, P.E.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0

Absent: Commissioner Hinkson.....1

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

## 719-56-BZ

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

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

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

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Patrick Gorman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for continued hearing.

## 337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92<sup>nd</sup> Street, northeast corner of East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

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

## 239-97-BZ

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

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

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

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: K. H. Koons.

THE VOTE TO CLOSE HEARING –

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

# MINUTES

Negative:.....0  
Absent: Commissioner Hinkson.....1  
**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 10 A.M., for decision, hearing closed.  
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## APPEALS CALENDAR

**115-07-A & 116-07-A**

**56-08-A/57-08-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: Philip Rampulla.

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

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated March 4, 2008, acting on Department of Buildings Application Nos. 510030324, 510030333, 510030342, and 510030351, reads in pertinent part:

“The proposed construction of a single family detached building (Use Group 1) in an R3X Zoning District within the bed of a mapped street is contrary to General City Law 35 and therefore referred to the Board of Standards and Appeals (BSA) for approval;” and

WHEREAS, a public hearing was held on this application on December 9, 2008 after due notice by publication in the *City Record*, and then to decision on December 16, 2008; and

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

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

WHEREAS, by letter dated April 10, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and advises the Board that there is an existing 10-inch diameter sanitary sewer, a 12-inch diameter storm sewer and an 8-inch diameter City water main in Ramona Avenue between Huguenot Avenue and Ellsworth

Avenue, and there is a 10-inch diameter sanitary sewer, a 21-inch diameter storm sewer, a 20-inch diameter City water main, and an 8-inch diameter City water main in Huguenot Avenue between Rathbun Avenue and Lamont Avenue; and

WHEREAS, DEP also notes that Amended Drainage Plan No. D-11 calls for a future 10-inch diameter sanitary sewer and a 12-inch diameter storm sewer in the bed of Ramona Avenue between Huguenot Avenue and Ellsworth Avenue, and for a 10-inch diameter sanitary sewer and a 21-inch to 24-inch diameter storm sewer in the bed of Huguenot Avenue between Rathbun Avenue and Lamont Avenue; and

WHEREAS, DEP requested the applicant to provide a survey showing: (i) the width of Huguenot Avenue between Rathbun Avenue and Lamont Avenue, and the width of widening portion of the street; (ii) the distance between the existing sewers, City water main, widening line, and the proposed development between Rathbun Avenue and Lamont Avenue; and (iii) a copy of Corporation Counsel Opinion dated August 15, 2002; and

WHEREAS, in response, the applicant submitted a survey showing an 80-foot total width of the mapped Huguenot Avenue between Rathbun Avenue and Lamont Avenue, of which approximately 38.7 feet will be available for the installation, maintenance, and/or reconstruction of the existing 10-inch diameter sanitary sewer, 21-inch diameter storm sewer, 20-inch diameter and 8-inch diameter City water main, and for the future 10-inch diameter sanitary sewer and 21-inch to 24-inch diameter storm sewer; and

WHEREAS, additionally, the applicant submitted a copy of the Corporation Council Opinion dated August 15, 2002; and

WHEREAS, by letter dated July 8, 2008, DEP states that it reviewed the applicant’s survey and requires the applicant to show: (i) the distance between the street lines of Ramona Avenue between Ellsworth Avenue and Huguenot Avenue and the existing sewer and water main in Ramona Avenue; and (ii) the distance from the terminal manhole of the 10-inch diameter sanitary sewer in Ramona Avenue and from the end cap of the 8-inch diameter City water main in Ramona Avenue to the lot line of Tentative Lot 54; and

WHEREAS, in response, the applicant submitted a revised survey showing an 80-foot total width of the mapped Ramona Avenue between the west side of the property line of Tentative Lot 54 and Ellsworth Avenue that will be available for the installation, maintenance and/or reconstruction of the existing 10-inch diameter sanitary sewer and 8-inch diameter City water main, and for the future 10-inch diameter sanitary sewer and 12-inch diameter storm sewer; and

WHEREAS, additionally, the applicant submitted a site plan dated March 25, 2008, showing a proposed irregular roadway width with a minimum of 38-feet on Ramona Avenue which will extend from the west side of the property line of Tentative Lot 54 to Huguenot Avenue and will be available for the installation, maintenance, and/or reconstruction of the future 10-inch diameter sanitary sewer and 12-inch diameter storm sewer; and

WHEREAS, by letter dated July 22, 2008, DEP states that it has reviewed the revised survey and site plan and finds

# MINUTES

them acceptable; and

WHEREAS, by letter dated October 27, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, additionally, DOT states that the applicant's property is not included in the agency's ten-year capital plan; 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 Staten Island Borough Commissioner, dated March 4, 2008, acting on Department of Buildings Application Nos. 510030324, 510030333, 510030342, and 510030351, 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 drawings filed with the application marked "Received December 10, 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 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;

THAT a Builder's Pavement Plan be filed and approved before DOB issues any permits; 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 16, 2008.

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**251-07-A thru 254-07-A**

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

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

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

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

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

Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of four semi-detached three-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 22, 2008 after due notice by publication in *The City Record*, with continued hearings on September 9, 2008, October 7, 2008, October 28, 2008 and November 18, 2008, and then to decision on December 16, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application; and

WHEREAS, a representative of Council Member Michael E. McMahon testified in opposition to this application; Council Member McMahon also submitted written testimony in opposition; and

WHEREAS, certain members of the community testified in opposition to this application, including members of the Houston Lane Homeowners Association, Inc. (collectively, the "Opposition"); and

WHEREAS, the subject site is located at the southeast corner of Houston Lane and Willowbrook Road; and

WHEREAS, the subject site has a total lot area of 23,023 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise tentative Tax Lot 542 (63 Houston Street), Tax Lot 543 (65 Houston Street), Tax Lot 150 (104 Willowbrook Road) and Tax Lot 151 (106 Willowbrook Road); and

WHEREAS, the applicant proposed to develop each tax lot with a semi-detached three-story three-family dwelling (collectively, the "proposed development"); and

WHEREAS, the subject site is currently located within an R3X zoning district, but was formerly located within an R3-2 zoning district; and

WHEREAS, on December 3, 2003 (the "Rezoning Date"), the City Council adopted a rezoning which changed the zoning of the subject site to R3X; and

WHEREAS, on August 12, 2004, the City Council adopted Lower Density Growth Management Area Text Amendments (LDGMA) and on December 8, 2008, the City Council adopted follow-up text amendments to the LDGMA regulations; and

WHEREAS, the proposed development does not comply with the R3X zoning district parameters as to use and dwelling unit count; and

WHEREAS, specifically, as to use, R3X zoning district regulations permit detached single-family and two-family dwellings; as noted above, the proposed development contemplates semi-detached three-family dwellings; and

WHEREAS, further, the number of dwelling units

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# MINUTES

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permitted is determined by a designated dwelling unit factor; under this factor, only four dwelling units would be permitted, rather than the total of twelve proposed; and

WHEREAS, on August 12, 2004, the City Council adopted Lower Density Growth Management Area (LDGMA) Text Amendments and on December 8, 2008, the City Council adopted follow-up text amendments to the LDGMA regulations; and

WHEREAS, the new LDGMA text regulations limit the number of homes that can be built behind other homes, and increase the minimum lot width and the width of required side yards for new developments; and

WHEREAS, the new regulations also restrict parking within the 30'-0" required rear yard; and

WHEREAS, the proposed development does not comply with the LDGMA regulations concerning minimum lot width, side yards, and parking; and

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

WHEREAS, New Building Permit No. 500629705 and New Building Permit No. 500629723 were issued to the prior owner permitting the construction of the subject homes at 63 Houston Street and 106 Willowbrook Road, (collectively, the "October 2003 Permits") by the Department of Buildings (DOB) on October 31, 2003, prior to the Rezoning Date; and

WHEREAS, New Building Permit No. 500629732 was issued November 3, 2003 and New Building Permit No. 500629714 was issued November 5, 2003 to the prior owner permitting the construction of the subject homes at 104 Willowbrook Road and 65 Houston Street (collectively, the "November 2003 Permits") by DOB, prior to the Rezoning Date; and

WHEREAS, a DOB submission further states that the October 2003 Permits and the November 2003 Permits (collectively, the "Permits") were lawfully issued and were effective until December 3, 2005; and

WHEREAS, on May 2, 2007, the applicant was issued a Stop Work Order, halting construction of the homes located at 63 Houston Street and 65 Houston Street; and

WHEREAS, on September 13, 2007, DOB, revoked the permits for construction of the homes at 65 Houston Street and on September 17, 2007, DOB revoked the permits for construction of the homes at 63 Houston Street; and

WHEREAS, a submission by DOB states that the revocations were made in error and were rescinded on July 18, 2008; and

WHEREAS, on February 6, 2008, due to their lapse by operation of law, DOB issued stop work orders halting construction of the homes at 104 Willowbrook Road and 106 Willowbrook Road and revoked the permits for the two sites; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the prior owner of the subject premises and were in effect until their lapse by operation of law on December 3, 2005; and

WHEREAS, a submission by DOB states that the foundations of the proposed development were complete as of

the Rezoning Date; and

WHEREAS, because the Permits were vested as of the Rezoning Date under Z.R. § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was January 3, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dep. 1976) stands 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, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dep. 1990) found that "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, as to substantial construction, the applicant states that before the lapse of the building permit on December 3, 2005, the previous owner had completed the foundations of the four buildings of the proposed development; and

WHEREAS, a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D. 86 (2d Dep't 1930); see also Elsinore Prop. Owners Ass'n v. Morwand Homes; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, DOB has established that the foundations were complete as of the Rezoning Date, the value of that work inheres to the current owner and may be considered in the instant application; and

WHEREAS, the applicant additionally asserts that subsequent to the transfer in ownership in October 2005, exterior construction on the dwellings located at 63 Houston Street and 65 Houston Street was 85 percent complete, including construction of the superstructure and some

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# MINUTES

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interior framing; and

WHEREAS, according to the applicant's submissions, the work was performed by the new owner between October 2006 and May 2007; and

WHEREAS, the work was performed pursuant to permits erroneously renewed by DOB until the imposition of the stop work orders on May 7, 2007; and

WHEREAS, however, since the Permits had lapsed by operation of law on December 3, 2005, work performed after that date cannot be considered toward the instant application; and

WHEREAS, the Board notes that the completion of the foundations of the subject site prior to the Rezoning Date is sufficient under New York State case law to support a positive vesting determination; a significant amount of work was performed at the site prior to the lapse of the Permits and said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the applicant states that the owner has expended in excess of \$1.3 million, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately \$2 million budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and accounting reports; and

WHEREAS, the Board notes that the applicant's budgeted expenditures include site acquisition and financing costs which, for the purposes of its analysis, the Board must exclude; and

WHEREAS, the applicant also enumerates expenditures and irrevocable financial commitments totaling approximately \$400,950 made after the lapse of the Permits, which the Board must also exclude; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the hard costs of the work performed by the previous owner are estimated at \$156,000 which includes the value of the site preparation, excavation, and the installation of the foundations prior to the lapse of the Permits; and

WHEREAS, the Board considers the amount of these expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that there would be a diminution in income if the unit count limitation of the new zoning were imposed; and

WHEREAS, the applicant states that under the R3X zoning and LDGMA regulations, a complying development could have no more than four units, rather than the 12 proposed; and

WHEREAS, the maximum permitted floor area on the lot is unchanged, consequently, each of the four complying

homes would be substantially larger than those of the proposed development; and

WHEREAS, the applicant represents that large homes of such a size are not desirable in the subject area, and therefore that the reduced unit count would lead to financial loss because the sale of four large homes would generate a lesser financial return per square foot than 12 smaller homes; and

WHEREAS, the applicant stated that the reduction by two-thirds in the number of units would result in a net loss of \$613,000 in sales revenue; and

WHEREAS, at hearing, the Board questioned the basis for the applicant's estimates; and

WHEREAS, the applicant provided an appraisal indicating that the sale of the four complying homes would result in a loss of \$603,000; and

WHEREAS, the Board agrees that the significant reduction in the number of units in the proposed development will result in a serious loss; and

WHEREAS, the applicant states that the inability to develop the proposed building would also require the redesign of the proposed development to account for the loss of eight units, further compounding the economic harm to the owner; and

WHEREAS, the Board agrees that the need to redesign and the limitations of any complying development constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; 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 proposed development had accrued to the owner of the subject site as of the Rezoning Date; and

WHEREAS, at hearing, the Opposition argued that the instant application must be denied because the owner performed illegal construction while a stop work order was in effect; and

WHEREAS, as noted above, a stop work order was imposed on May 2, 2007, halting construction of the homes at 63 Houston and 65 Houston Street; and

WHEREAS, a submission by DOB states that the stop work order was partially lifted on July 8, 2008 to permit the installation of windows and siding necessary to protect the homes from penetration by rain and snow; and

WHEREAS, the applicant states that the work performed on the proposed development pursuant to the partial lift was limited to the installation of windows and siding, and a fence to secure the site; and

WHEREAS, the Opposition and the City Council Member also raised concerns with the compatibility of the proposed development with the character of the surrounding community; 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

# MINUTES

general community opposition; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, 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 reinstatement of the Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit Nos. 500629714, 500629723, 500629705, and 500629732, 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, and the Board hereby extends the time to complete the proposed development for four years from the date of this resolution, to expire on December 16, 2012.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 200-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Michelle & Robert Bernabo, lessees.

SUBJECT – Application July 29, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of a mapped street and the upgrade of an existing non conforming private disposal system located in the bed of a mapped street contrary to General City Law Section 35.

PREMISES AFFECTED – 171 Bayside Drive, south side Bayside Drive, 138.75’ west of Beach 178<sup>th</sup> Street, Block 16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

For Applicant: Gary Lenhart.

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

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410119116 which 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 16, 2008 after due notice by

publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated August 11, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated August 14, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; 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, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 22, 2008 , acting on Department of Buildings Application No. 410119116, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 29,2008”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT 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 16, 2008.

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## 204-08-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Inc., owner; Kathleen & Ralph Reed, lessees.

SUBJECT – Application August 5, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 26 Roosevelt Walk, west side Roosevelt Walk, 488.46’ south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

# MINUTES

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner  
Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated July 29, 2008, acting on Department of Buildings Application No. 410114638 which 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 16, 2008 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated August 18, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 2, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410114638 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 5, 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 16, 2008.

## 205-08-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Domenic Guastadisegni, owner.  
SUBJECT – Application August 6, 2008 – Reconstruction and enlargement of an existing single family home located partially within the bed of mapped street contrary to General City Law Section 35 and not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 32 Tioga Walk, west side of Tioga Walk, north of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretha Papa.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner  
Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410122059, reads in pertinent part:

- “A1- The building is partially located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law, and
- A2- The site and the building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Article 3, Sect 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York; and

WHEREAS, a public hearing was held on this application on December 16, 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 28, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 2, 2008, the

# MINUTES

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

WHEREAS, by letter dated November 18, 2008 the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410122059, is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 6, 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 16, 2008.

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## 232-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary & Steven Maceda, lessees. SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 50 Tioga Walk, west side Tioga Walk 126.5' south of 6<sup>th</sup> Avenue, Block 16350, Lot p/o 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 2, 2008, acting on Department of Buildings Application No. 410143599, reads in pertinent part:

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

WHEREAS, a public hearing was held on this application on December 16, 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, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 22, 2008, acting on Department of Buildings Application No. 410143599, 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 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 16, 2008.

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# MINUTES

## 233-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Elizabeth & Geoffrey Gilmartin, lessees.

SUBJECT – Application September 9, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Hillside Avenue) contrary to General City Law Section 35 and the upgrade of an existing private disposal system located within the bed of a mapped street contrary to GCL 35 and the Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 56 Hillside Avenue, south side Hillside Avenue 72.54’ west of intersection with Rockaway Point Boulevard, Block, 16340, Lot p/o 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 19, 2008, acting on Department of Buildings Application No. 410135072, 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 16, 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, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; 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, 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 19, 2008, acting on Department of Buildings Application No. 410135072, 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 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 16, 2008.

## 240-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Victoria and William Fernandez, lessees.

SUBJECT – Application September 25, 2008 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street and the upgrade of an existing private disposal system in the bed of the mapped street contrary to General City Law Section 35 and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 167 Bayside Drive, south side of Bayside Drive 100’ west of mapped Beach 178<sup>th</sup> Street, Block 16340, Lot p/o 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 15, 2008, acting on Department of Buildings Application No. 410154773, reads in pertinent part:

“A1- The existing building to be reconstructed and altered lies within the bed of a mapped street

# MINUTES

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 16, 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 24, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 9, 2008, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 18, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, correspondence from DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated September 15, 2008, acting on Department of Buildings Application No. 410154773, 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 September 25, 2008”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure 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 16, 2008.

## 70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a

common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

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

## 73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED –354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

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

## 103-08-BZY

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

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

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

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

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

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# MINUTES

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Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for decision, hearing closed.  
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## 120-08-A

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

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

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

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman and Harry Georgeson.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 10 A.M., for continued hearing.  
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## 149-08-A

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

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

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

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Jack Lester.

For Opposition: Lisa Orrantia, Albert Frederis, Brian Cut, Shane Seger and Jean Green Dorsey.

**ACTION OF THE BOARD** – Laid over to February 3, 2009, at 10 A.M., for postponed hearing.  
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## 168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2<sup>nd</sup> Place, east side of Brighton 2<sup>nd</sup> Place, 110’ north of Brighton 2<sup>nd</sup> Lane, Block 8662, Lot 157, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Laid over to January

27, 2009, at 10 A.M., for continued hearing.  
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## 261-08-BZY & 262-08-A

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.  
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

### COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.  
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## 263-08-BZY & 264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 29-23 40<sup>th</sup> Road and 30-02 40<sup>th</sup> Avenue, Block 402, Lots 12 & 35, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stuart Beckerman, Michael Potel and David E. Gross.

**ACTION OF THE BOARD** – Laid over to January 13, 2009, at 1:30 P.M., for continued hearing.  
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*Jeffrey Mulligan, Executive Director*

Adjourned: A.M.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, DECEMBER 16, 2008  
1:30 P.M.**

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

**ZONING CALENDAR**

**205-07-BZ**

**CEQR #08- BSA-015Q**

APPLICANT – Omnipoint Communications Inc., for Joseph Wroblewski, owner; Omnipoint Communications, Inc., lessee.

SUBJECT – Application August 20, 2007 – Special Permit (§73-30) to allow a non-accessory radio tower on the rooftop of an existing building. The tower will be disguised as a 25' flagpole. The site is located in an R4-1 zoning district.

PREMISES AFFECTED – 53-20 72<sup>nd</sup> Place, west side of the intersection of 53<sup>rd</sup> Road and 72<sup>nd</sup> Place, Block 2506, Lot 52, Borough of Queens.

**COMMUNITY BOARD #5Q**

APPEARANCES –

For Applicant: Robert Gardioso.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Queens Borough Commissioner, dated February 20, 2008, acting on Department of Buildings Application No. 402456454, reads in pertinent part:

“Proposed monopole (Use Group 6) is contrary to ZR § 22-00 and therefore not allowable within R4-1 district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4-1 zoning district, the proposed construction of a telecommunications pole (non-accessory radio tower) for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on January 29, 2008, after due notice by publication in *The City Record*, with continued hearings on April 15, 2008, June 17, 2008, August 19, 2008, and November 18, 2008, and then to decision on December 16, 2008; and

WHEREAS, Community Board 5, Queens, recommends disapproval of this application; and

WHEREAS, certain elected officials, including

Congressman Joseph Crowley, Council Member Dennis Gallagher, State Senator Serphin Maltese, Assembly Member Margaret Markey, and Queens Borough President Helen Marshall provided testimony in opposition to this application; and

WHEREAS, the Middle Village Maspeth Civic Association and the Juniper Park Civic Association also provided testimony in opposition to this application; and

WHEREAS, a number of local residents testified in opposition to this application, citing concerns with aesthetics and health; and

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

WHEREAS, the proposed telecommunications pole will be located on a site with an existing two-story building; and

WHEREAS, the applicant states that the proposed telecommunications pole will consist of a 13'-0" high monopole mounted on the roof of the existing building, resulting in a maximum height above ground level of 42'-6"; and

WHEREAS, the proposed telecommunications pole includes six small panel antennas located inside that are completely hidden from view and equipment cabinets located at its base; and

WHEREAS, the applicant states that the base of the telecommunications pole and the related equipment cabinets will be surrounded by a screened wall which is finished to match the existing building; and

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

WHEREAS, at hearing, the Board asked the applicant to respond to a “call test” conducted by a number of community residents, from which they concluded that there is adequate cellular reception in the subject area and that the telecommunications pole is therefore unnecessary; and

WHEREAS, in response, the applicant cited *AT&T Wireless Serv. of Cal. LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1155-56 (S.D. Cal. 2003), and *Nextel Comm. of the Mid-Atlantic, Inc. v. Town of Sudbury*, 2003 WL 543383 (D. Mass. Feb. 26, 2003), and submitted an affidavit from a radio frequency engineer, standing for the proposition that community residents’ anecdotal call tests are not construed to be a valid assessment of wireless network coverage and cannot be utilized to assess the true state of the wireless network; and

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

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the

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# MINUTES

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construction and operation of the pole will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the height of the pole is the minimum necessary to provide the required wireless coverage; and

WHEREAS, the applicant initially sought to install a 25-foot high telecommunications pole, resulting in a maximum height above ground level of 54'-6", with a base diameter of 36 inches; and

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

WHEREAS, in response to concerns raised by the community, at hearing the Board requested that the applicant reduce the height and width of the proposed telecommunications pole and eliminate the flag and the proposed lighting; and

WHEREAS, in response, the applicant submitted revised plans reflecting a reduction in the height of the telecommunications pole from 25 feet to 13 feet, a reduction in the base diameter from 36 inches to 32 inches, and the elimination of the flag and the proposed lighting; and

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

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-015Q, dated August 20, 2007; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30 to permit, within an R4-1 zoning district, the proposed construction of a 13'-0" telecommunications pole (non-accessory radio tower) for public utility wireless communications, to be mounted onto the roof of an existing two-story building for a maximum height of 42'-6" above ground level, and a base diameter of 32 inches, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received December 2, 2008"-(4) sheets; and *on further condition*;

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

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

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

Adopted by the Board of Standards and Appeals, December 16, 2008.

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**51-08-BZ**

**CEQR #08-BSA-065K**

APPLICANT – Francis R. Angelino, Esq., for Sephardic Institute, owner.

SUBJECT – Application March 6, 2008 – Variance (§72-21) to permit the development of a new six-story & mezzanine synagogue. The proposal is contrary to ZR §24-11 (lot coverage, FAR, & open space), §24-382 (required rear yard equivalent), §24-522 and §23-633 (building height exceeding maximum permitted height & required front setback not provided.) R6A (Ocean Parkway Special Zoning District).

PREMISES AFFECTED – 511 Avenue R, Kings Highway and Ocean Parkway, Block 6681, Lot 394, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Francis R. Angelino.

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# MINUTES

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 8, 2008, acting on Department of Buildings Application No. 310090950, reads in pertinent part:

- “1. Lot coverage exceeds the maximum lot coverage permitted (60%, ZR 24-11)
2. Floor Area Ratio exceeds the maximum permitted FAR (3.0, ZR 24-11)
3. Required rear yard equivalent is not provided (ZR 24-382)
4. Building height exceeds the maximum height permitted (70’, ZR 24-522, 23-633)
5. Required front setback is not provided (ZR 24-522, 23-633)
6. Minimum required open space does not comply (40%, ZR 24-11);” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R6A zoning district, within the Special Ocean Parkway District, a six-story and mezzanine synagogue (Use Group 4), which does not comply with lot coverage, floor area ratio, required rear yard equivalent, height, front setback, and open space, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-633; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with a continued hearing on September 9, 2008, after which the application was set for decision on October 28, 2008; on October 28, 2008, the decision was deferred until December 16, 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 approval of the application; and

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

WHEREAS, the subject premises is located on the north side of Avenue R between Kings Highway and Ocean Parkway, and

WHEREAS, the site has a total lot area of 4,288 sq. ft. and is located within an R6A zoning district within the Special Ocean Parkway District; and

WHEREAS, the site is occupied by a three-story synagogue (Use Group 4); and

WHEREAS, the site has been under the jurisdiction of the Board since March 3, 1981 when, under BSA Cal. No. 1254-80-BZ, the Board granted a variance pursuant to ZR § 72-21 permitting a one-story enlargement of an existing two-

story synagogue and private school; and

WHEREAS, the applicant represents that the existing building, as enlarged, is no longer adequate to meet the Synagogue’s programmatic needs; and

WHEREAS, the proposed building provides for a six-story and mezzanine synagogue with the following parameters: an FAR of 4.85 (the maximum permitted FAR is 3.0); a street wall height of 78’-0” (the maximum street wall height permitted is 60’-0”); and a total height of 95’-6” (the maximum total height permitted is 70’-0”); and

WHEREAS, additionally, the building will maintain the following existing non-compliances: a lot coverage of 99.7 percent (a maximum of 60 percent is permitted); an open space of 0.3 percent (a minimum of 40 percent is required); no rear yard equivalent (a minimum rear yard equivalent of 60’-0” is required); and no front yard setback (a minimum front yard setback of 10’-0” is required); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue: (1) to provide sufficient space to accommodate the congregation of more than 620 members; and (2) to provide space for services and programs other than worship services; and

WHEREAS, the applicant states that the existing building, which has three sanctuary spaces, is occupied beyond legal capacity for Sabbath and holiday services; and

WHEREAS, the applicant further states that the existing building lacks elevators, air conditioning units, and adequate bathrooms for the size of the congregation; and

WHEREAS, the applicant represents that the large amount of space taken up by the elevator core, mechanical space, and bathrooms in the proposed building leaves only 44 percent of gross floor area for program space; and

WHEREAS, the proposed building has the following program: (1) administrative offices, bathrooms, storage, and mechanical space on the cellar floor; (2) a lobby, a meeting room, and a sanctuary for the male congregants on the first floor; (3) the primary worship space on the second floor; (4) a balcony from which the female congregants can observe the main sanctuary on the third floor; (5) a multi-purpose room, a warming kitchen, and a mezzanine for mechanical space on the fourth floor; (6) a family sanctuary and a mezzanine for mechanical space on the fifth floor; and (7) mechanical space on the sixth floor; and

WHEREAS, the applicant further states that a complying building would be inadequate to accommodate the size of the congregation and would not permit the creation of a women’s balcony on the third floor; and

WHEREAS, the applicant represents that the requested variance is necessary to provide adequate space for worship services, associated programs, and mechanical space; and

WHEREAS, additionally, the applicant represents that the requested variance enables the Synagogue to have the third floor women’s balcony; and

WHEREAS, the applicant states that worship space which separates men and women is critical to its religious practice, thus necessitating the requested waivers; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant

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# MINUTES

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deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Westchester Reform Temple v. Brown*, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, however, the applicant also presents the following site conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: the site's irregular trapezoidal shape and high water table; and

WHEREAS, as to the shape of the lot, the length of the northern property line is approximately 49 feet, the eastern property line is approximately 121 feet, the southern property line is approximately 40 feet, and the western property line is approximately 93 feet; and

WHEREAS, the applicant states that an as-of-right development on this zoning lot would result in floor plates which would be small and inefficient with a significant portion of both space and floor area allocated toward circulation space, egress, and exits; and

WHEREAS, the applicant represents that the required floor area cannot be accommodated within the as-of-right lot coverage, height, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, as to the site's water conditions, the applicant states that soil borings indicate that the underground water table was measured to a depth of 16 feet; and

WHEREAS, the applicant states that due to the site's high water table, the height of the building cannot be lowered to accommodate more floor area below grade; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Synagogue is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the building does not alter the essential character of the neighborhood or substantially impair the appropriate use or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant notes that the synagogue use is

permitted in the subject zoning district and that the Synagogue has existed at the site since 1966; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the subject building is consistent with buildings in the surrounding neighborhood; and

WHEREAS, the applicant notes that the lots located immediately to the east and west of the subject building are occupied by six-story residential buildings; these are the only three buildings located on the block; and

WHEREAS, the applicant further notes that several other community facility buildings are located in the surrounding community, including a four-story Yeshiva and a two-story synagogue on the east side of Ocean Parkway, within 400 feet of the subject building; and

WHEREAS, at hearing, the Board raised concerns about the height of the proposed building; and

WHEREAS, in response, the applicant submitted revised plans indicating that 1,243 sq. ft. of the roof level and the associated parapet on the south end of the building, along with the ceiling heights in the family sanctuary below the roof, have been reduced by 3'-6"; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the height of the subject building was reduced to the minimum necessary to accommodate the Synagogue's current and projected programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the applicant to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA065K, dated March 6, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront

# MINUTES

Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) a March 2008 Environmental Assessment Statement; (2) a January 2007 Phase I Environmental Site Assessment; (3) a September 2008 Site Investigation Report; (4) an October 2008 Remedial Action Plan (“RAP”); and (5) a Construction Health and Safety Plan (CHASP); and

WHEREAS, the applicant has agreed to implement any hazardous materials remediation required by a revised RAP, pursuant to a Restrictive Declaration executed and recorded against the subject property on December 9, 2008; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R6A zoning district, within the Special Ocean Parkway District, a six-story and mezzanine synagogue (Use Group 4), which does not comply with lot coverage, floor area ratio, required rear yard equivalent, height, front setback, and open space, contrary to ZR §§ 24-11, 24-382, 24-522, and 23-633, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 18, 2008”–(2) sheets and “Received August 26, 2008”–(15) sheets; and *on further condition*:

THAT the building parameters shall include an FAR of 4.85, a street wall height of 78’-0”, a total height of 95’-6”, a lot coverage of 99.7 percent, an open space of 0.3 percent, no rear yard equivalent, and no front yard setback;

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

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

THAT DOB shall confirm that the building complies with all Building Code and safety measures;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 16, 2008.

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## 175-08-BZ

### CEQR #09-BSA-002M

APPLICANT – Eric Palatnik, P.C., for Mama Spa Corporation, owner.

SUBJECT – Application July 3, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment at the cellar, first and second floors of an existing five-story building. The proposal is contrary to ZR §32-10. C6-1 district.

PREMISES AFFECTED – 141 Allen Street, between Rivington Street and Delancey Street, Block 415, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #3M

#### 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 and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

#### THE RESOLUTION:

WHEREAS, a decision of the Manhattan Borough Commissioner, dated September 23, 2008, acting on Department of Buildings Application No. 110110175, reads in pertinent part:

“1. ZR 32-10. Proposed ‘Physical Culture Establishment’ is not permitted in ZD C6-1.

2. ZR 73-36. BSA Special Permit Required;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-1 zoning district, the establishment of a physical culture establishment (PCE) on the cellar, first, and second floors of an existing five-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with a continued hearing on November 25, 2008, and then to decision on December 16, 2008; and

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

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

WHEREAS, the subject site is located on the west side of Allen Street, between Rivington Street and Delancey Street; and

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

WHEREAS, the PCE will occupy a total of 2,000 sq. ft. of floor area on the first and second floors; and

WHEREAS, the PCE will be operated by Mama Spa

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# MINUTES

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Corp.; and

WHEREAS, the applicant represents that the services at the PCE will include the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, the hours of operation for the PCE will be: Monday through Sunday, from 10:00 a.m. to 11:00 p.m.; 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, by letter dated September 30, 2008, the Fire Department states that it has reviewed the application and advises the Board that an approved Interior Fire Alarm System (IFA) should be installed, which includes: (i) area smoke detectors installed throughout the areas occupied by the PCE; (ii) manual pull stations to be installed at each required exit; (iii) local audible and visible alarms; (iv) interconnection of the IFA to the existing sprinkler system; and (v) connection of the IFA to an FDNY-approved central station; and

WHEREAS, additionally, the Fire Department advises the Board that the PCE local alarm should be activated when any sprinkler in the building is triggered; and

WHEREAS, in response, the applicant submitted revised plans indicating that an approved interior fire alarm system shall be installed throughout the entire PCE space; and

WHEREAS, at hearing, the Board requested the applicant to establish whether the wheelchair lift located at the subject site is permitted and whether it encroaches onto the public sidewalk; and

WHEREAS, in response, the applicant submitted a Department of Buildings (DOB) Inspection Certificate, indicating that the wheelchair lift is in full compliance with the NYC Building Code; 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. 09BSA002M, dated September 29, 2008; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental 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 C6-1 zoning district, the establishment of a physical culture establishment on the cellar, first, and second floors of a five-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 December 2, 2008"-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 16, 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,

# MINUTES

December 16, 2008.

**195-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Aron Bistritzky, owner.

SUBJECT – Application July 16, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary open space and floor area (§23-141); less than the required rear yard (§23-47) and less than the required side yard (§23-461) in an R-2 zoning district.

PREMISES AFFECTED – 1350 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue N and Avenue M, Block 7662, Lot 72, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 13, 2008, acting on Department of Buildings Application No. 310152134, reads in pertinent part:

- “1. Proposed floor area exceeds the maximum permitted pursuant to ZR Section 23-141
2. Proposed open space ratio is less than the minimum required pursuant to ZR Section 23-141
3. Proposed side yard is less than the minimum required pursuant to ZR Section 23-461
4. Proposed rear yard is less than the minimum required pursuant to ZR Section 23-47;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; 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 25, 2008, and then to decision on December 16, 2008; and

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

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

WHEREAS, at hearing, certain neighbors testified in opposition to the application, citing concerns about

compatibility with neighborhood character; and

WHEREAS, the subject site is located on the west side of East 27<sup>th</sup> Street, between Avenue M and Avenue N; and

WHEREAS, the subject site has a total lot area of 8,000 sq. ft., and is occupied by a single-family home with a floor area of 2,103 sq. ft. (0.26 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 2,103 sq. ft. (0.26 FAR) to 7,984 sq. ft. (0.99 FAR); the maximum floor area permitted is 4,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 50 percent (150 percent is the minimum required); and

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

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

WHEREAS, the Board requested the applicant to establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted property information and photographs for a sampling of six homes within a three-block radius of the subject site with floor areas comparable to that of the proposed home; and

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

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

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

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

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

# MINUTES

application and marked "Received November 12, 2008"– (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 7,984 sq. ft. (0.99 FAR); an open space ratio of 50 percent; one side yard with a width of 4'-5" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve 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 16, 2008.

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## 225-08-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Lewis Sternlicht, owner.

SUBJECT – Application September 2, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family residence. This application seeks to vary open space and floor area (§23-141(a)); side yards (§23-461) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1155 East 24<sup>th</sup> Street, between Avenue K and Avenue L, Block 7624, Lot 22, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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 and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION:**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated July 22, 2008, acting on Department of Buildings Application No. 310160946, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to 23-141(a) in

that the proposed Open Space Ratio (OSR) is less than the required 150%.

3. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".

4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than 30'-0";" and

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

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on December 16, 2008; and

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

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

WHEREAS, at hearing, certain neighbors testified in opposition to the application; and

WHEREAS, the subject site is located on the east side of East 24<sup>th</sup> Street, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a two-family residence with floor area of 2,575 sq. ft. (0.69 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 2,575 sq. ft. (0.69 FAR) to 3,744 sq. ft. (1.0 FAR); the maximum floor area permitted is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 51 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement maintains the existing non-complying side yard along the southern lot line with a width of 4'-2" (a minimum width of 5'-0" is required); and

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

# MINUTES

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 2, 2008"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,744 sq. ft. (1.0 FAR); an open space ratio of 51 percent; one side yard with a width of 4'-2" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve 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 16, 2008.

## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of

Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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

## 20-08-BZ

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

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

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

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

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

## 46-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to § 24-11 (Floor area ratio and lot coverage) and §24-522 (front wall height, setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Hinkson.....1

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

## 155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

# MINUTES

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Scott Kurland, Susan Klapper, Zoe Tatkow and Samuel Falack.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Hinkson.....1

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

## 159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES – None.

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

## 162-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93<sup>rd</sup> Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93<sup>rd</sup> Street, southeast corner of East 93<sup>rd</sup> Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Lo Van der Valk, Susan Kathryn Hefti and Omar Rodriquis.

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

## 198-08-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (aka 268-276 Park Avenue South) west side of Park Avenue South at East 21<sup>st</sup> Street, Block 850, Lot 39, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

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

## 206-08-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.

SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.

PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Annapolis Street, Block 15578, Lot 8, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik, Lewis Gardinkel and Marc Feder.

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

## 226-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.

PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Silvia Y. Lavalas, Fay B. Fraser and Paul B. Martin.

**ACTION OF THE BOARD** – Laid over to January

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# MINUTES

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27, 2009, at 1:30 P.M., for continued hearing.  
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*Adjourned: P.M.*

## **230-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23<sup>rd</sup> Street, East side of 23<sup>rd</sup> Street between Avenue J and Avenue K, Block 7605, Lot 36, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.  
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## **250-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5<sup>th</sup> Street, east side of East 5<sup>th</sup> Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to January 27, 2009, at 1:30 P.M., for continued hearing.  
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## **251-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Cynthia Esses, owner.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing one family residence. This application seeks to vary side yards (§23-48) and less than the required rear yard (§23-47) in an R5 (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 2153 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 50, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

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