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Affecting Calendar Numbers:

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DOCKETS

New Case Filed Up to August 25, 2009

243-09-BZY

87-12 175th Street, "0" Feet from corner of 175th Street and Warwick Cres., Block 9830, Lot(s) 32, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to complete construction under the prior zoning district. R4-1 district.

244-09-BZY

175 Vanderbilt Avenue, East side of Vanderbilt Avenue approximately 91' south of the intersection of Vanderbilt Avenue and Myrtle Avenue., Block 1901, Lot(s) 19,20, Borough of **Brooklyn, Community Board: 2.** Extension of Time (11-332) to complete construction under the prior district. R6B/C2-4 district.

245-09-BZY

120 Adelphi Street, West side of Adelphi Street approximately 252' north of the intersection of Adelphi Street and Myrtle Avenue., Block 2044, Lot(s) 74,75, Borough of **Brooklyn, Community Board: 2.** Extension of Time (11-332) to complete construction under the prior zoning district. R6B district.

246-09-BZ

636 Louisiana Avenue, Western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot(s) 140, Borough of **Brooklyn, Community Board: 18.** Variance to allow a four-story assisted living facility that exceeds the applicable floor area, contrary to use regulations. R5 district.

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.

CALENDAR

SEPTEMBER 22, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 5, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (Mobil) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

191-53-BZ

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

SUBJECT – Application August 17, 2009 – Extension of Time and Waiver of the Rules to obtain a certificate of occupancy for a Gasoline Service Station (Mobil) which expired on September 21, 2001. C2-2/R7-1 zoning district.

PREMISES AFFECTED – 42-02/18 Queens Boulevard, south side blockfront from 42nd Street to 43rd Street, Block 169, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

613-74-BZ

APPLICANT – Greenberg Traurig LLP by Jay Segal, for NY-1095 Avenue of the Americas, LLC, owner; Metropolitan Life Insurance Company, lessee.

SUBJECT – Application July 24, 2009 – Amendment to a previously granted Variance (§72-21) to permit the relocation of the illuminated signage (Metlife) from the North facade to the East façade of the existing 42 story commercial building. C6-6, C5-3, C6-7, C5-2.5/Special Midtown District/Theater Subdistrict.

PREMISES AFFECTED – 1095 Avenue of the Americas, between 42nd Street and 41st Street, Block 994, Lot 1001-1011, Borough of Manhattan.

COMMUNITY BOARD #5M

272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76th Associates, LLC, owner; Equinox 76th Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Amendment of a Special Permit (§73-36) to allow an enlargement of 14,814 square feet for a Physical Culture Establishment. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka 205 W. 76th Street aka 204 W. 77th Street, west side of Amsterdam Avenue, between West 76th and West 77th Streets, Block 1168, Lots 1001, 1002, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

188-09-A

APPLICANT – John Natoli, for Michael Ortega, owner.

SUBJECT – Application June 10, 2009 – Legalization of a one story enlargement to an existing home located within the bed of a mapped street Noel Road) contrary to General City Law Section 35. R3-2 Zoning District.

PREMISES AFFECTED – 214 Noel Road, south side of Noel Road and East side of 103rd Street, Block 15459, Lot 9, Borough of Queens.

COMMUNITY BOARD #14Q

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 Zoning District.

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

COMMUNITY BOARD #3M

CALENDAR

SEPTEMBER 22, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 22, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance to allow a public parking garage and increase above the maximum permitted floor area in a mixed residential and community facility building, contrary to sections 22-10 and 24-162 of the zoning resolution. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142’-2.5” north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit pursuant to (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100’ east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 25, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential building which expires on July 28, 2009. C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction of a modification to an existing plaza of a residential building, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 11, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, the subject site is located on the southeast corner of Second Avenue and East 74th Street, within a C1-9 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1966 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a 36-story mixed-use commercial/residential building at the site; and

WHEREAS, on April 19, 2005, under the subject calendar number, the Board granted an amendment to permit modifications to the size, configuration and design of the existing plaza for the 36-story building; and

WHEREAS, on June 19, 2007 and again on October 28,

2008, the Board extended the time to complete construction of the modification of the existing plaza, and extended the time to obtain a certificate of occupancy; and

WHEREAS, a condition of the most recent grant was that work be completed by July 28, 2009, and a certificate of occupancy be obtained by January 28, 2010; and

WHEREAS, the applicant states that work has not been completed and a certificate of occupancy will not be obtained within the noted timeframe; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete the remaining construction; and

WHEREAS, in support of the assertion that work is proceeding at the site, the applicant initially submitted photographs of the construction; and

WHEREAS, the Board directed the applicant to provide more details as to which construction had been completed and what remains and to include contracts entered into with those performing the construction work; and

WHEREAS, in response, the applicant provided a contract with a construction company, which details the scope of work remaining; and

WHEREAS, the list of proposed work includes: removing any temporary railings and temporary site protection; and installing stone walls, gates, guardrail, plantings, water fountain, electricity, plumbing, irrigation, gates; and

WHEREAS, the Board directed the applicant to avoid delay and to work diligently to complete construction within the timeframe set forth in this grant so that it will be in compliance with the original grant; and

WHEREAS, as to the certificate of occupancy requirement, the applicant states that due to the fact that on a continuous basis, there are open DOB applications for construction within the 36-story building on the site, the property owner is prevented from obtaining a certificate of occupancy, which is only possible when all work in the building has been completed; and

WHEREAS, accordingly, the Board directed the applicant to obtain a sign-off from DOB, which reflects that the subject work has been completed, notwithstanding the absence of a revised certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 3, 1966, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to complete construction, to expire on February 25, 2010; *on condition:*

THAT construction shall be substantially complete by February 25, 2010;

THAT written verification from DOB as to the completion of the subject construction shall be obtained by April 25, 2010;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

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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. 103595012)

Adopted by the Board of Standards and Appeals, August 25, 2009.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a variance (§72-21) for a two story building for commercial use (UG 6) in a residential district. R8 zoning district.

PREMISES AFFECTED – 70 East 184th Street, southwest corner of East 184th Street and Morris Avenue, Block 3183, Lot 42, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy for a two-story commercial building; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, and then to decision on August 25, 2009; and

WHEREAS, the site is located on the southwest corner of the intersection at East 184th Street and Morris Avenue, within an R8 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2000 when, under the subject calendar number, the Board granted a variance application to permit the construction of a two-story commercial building (UG 6) in an R8 zoning district; and

WHEREAS, on April 13, 2004, the Board reopened and amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, which expired on April 13, 2006; and

WHEREAS, on August 15, 2006, the Board reopened and amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, which expired on August 15, 2008; and

WHEREAS, the applicant represents that construction was delayed due to financing issues which have been resolved; and

WHEREAS, the applicant further states that construction is now nearly complete; and

WHEREAS, thus, the applicant requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board has determined that the evidence in the record supports the grant of the requested extension.

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 11, 2000, so that as amended this portion of the resolution shall read: “to permit an extension of time to complete construction and obtain a certificate of occupancy for a term of two years from the date of this resolution, to expire on August 25, 2011; *on condition*:

THAT substantial construction shall be completed by February 25, 2011;

THAT a Certificate of Occupancy shall be obtained by August 25, 2011;

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

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

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

(DOB Application No. 200483422)

Adopted by the Board of Standards and Appeals, August 25, 2009.

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.

SUBJECT – Application April 29, 2009 – Amendment of variance (§72-21) which allowed conversion of upper floors of building from commercial to residential. Amendment would permit the conversion of the second floor from commercial to residential use. M1-5 zoning district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets, Block 601, Lots 1201-1212, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Minor.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted

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the conversion of the upper three stories of a five-story mini-storage facility from manufacturing to residential use and the construction of a new residential penthouse, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 11, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located at the northeast corner of the intersection of Greenwich Street and Clarkson Street, within an M1-5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 2001 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the conversion of the upper three stories of a five-story mini-storage facility from manufacturing to residential use and the construction of a new residential penthouse, contrary to ZR § 42-00; and

WHEREAS, a condition of the Board's grant was that the number of residential units in the building be limited to six; and

WHEREAS, the applicant now seeks to amend the grant to permit the further conversion of the three commercial units on the second floor to residential use, thereby increasing the total number of residential units permitted in the building from six to nine; and

WHEREAS, the applicant represents that the original variance did not seek to allow residential use at the second floor because members of the entity that developed the building, which is managed and controlled principally by the owners of the residential units in the building, planned to use the three commercial units on the second floor as office space for their small businesses; and

WHEREAS, the applicant states that in the years since the variance was granted, the owners of two of the units on the second floor ceased their business operations and have had difficulty finding long-term replacement tenants; and

WHEREAS, the applicant represents that converting the second floor to residential use is necessary to provide a reasonable return because the owners are unlikely to find commercial tenants for the second floor units for the following reasons: (1) the building is in an area that is not marketable for general office use; (2) the physical structure of the building limits the flexibility of the space for prospective tenants; (3) access issues associated with the shared elevator for the building make the second floor units undesirable for general office use; and (4) there is a lack of demand for commercial uses above the first floor in buildings with residential use; and

WHEREAS, as to the location, the applicant provided the economic analysis filed in connection with the original variance application, which states that the subject area is only suitable for non-corporate space or boutique office space users,

and is not attractive as general office space; and

WHEREAS, as to the physical structure of the building, the applicant states that the building has small floor plates and that two 16-inch concrete structural walls separate each floor into three units, which are further divided by a row of columns down the center of each unit, spaced at 7'-2" intervals, leaving the space only viable for small boutique businesses; and

WHEREAS, the Board notes that the unique building conditions, which support the findings for the original variance for the third, fourth and fifth floors, namely that those floors were not viable for a conforming use due to the building's inadequate loading area and floor plates, also apply to the second floor; and

WHEREAS, as to the access issues, the applicant states that the building only has one elevator that services both the commercial units on the second floor and the residential units above, and that this shared elevator access reduces the general market viability of the second floor commercial units because it affects customers' access to the commercial space; and

WHEREAS, the applicant further states that if the second floor units were able to be leased to businesses that have no relationship to the businesses on the first floor, then the existing internal stairs would be removed from the two units that have them, and the only access to the second floor units would be the single elevator in the building; in such circumstance, the applicant states that the residential occupants of the building would be concerned about security issues associated with the shared elevator access; and

WHEREAS, as to the lack of demand for commercial uses above the first floor in buildings with residential use, the applicant submitted a Sanborn map reflecting that of the 22 buildings in the surrounding area with a residential use above the first floor, only one other building also has a commercial use above the first floor; and

WHEREAS, the applicant states that the paucity of commercial use above the first floor in buildings with residential use is reflective of the weak demand for such space in the surrounding area; and

WHEREAS, as further evidence of the owners' inability to find commercial tenants for the second floor units, the applicant submitted a letter from one of the owners describing the unsuccessful marketing efforts that have been undertaken to lease the commercial units; and

WHEREAS, the letter states that the brokers with whom the owner consulted indicated that even if a tenant could be found, the owner could not expect to receive a monthly rental greater than \$25.00 per square foot; and

WHEREAS, the applicant notes that in 2000, when the original variance was applied for, the economic analysis assumed that an office rental of \$30.00 per square foot would be the minimum necessary to generate a reasonable return; and

WHEREAS, thus, the applicant concludes that an office rental of \$25.00 per square foot in 2009, even assuming no inflation, is not sufficient to provide a reasonable return; and

WHEREAS, the applicant submitted a financial report reflecting the commercial vacancy in the area, which indicated that the current market rate in the surrounding area is approximately \$48.00 per square foot; and

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WHEREAS, the applicant states that the estimated \$23.00 per square foot discount for the subject site is primarily due to conditions that pertain uniquely to the site and the building; and

WHEREAS, the applicant also submitted a letter from a real estate broker which states that an extended marketing effort for the second floor units in the current environment would prove futile; and

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

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 13, 2001, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the conversion of the second floor from manufacturing to residential use, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received April 29, 2009”-(4) sheets; and *on further condition*:

THAT no more than nine residential units shall occupy the subject building;

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

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

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

(DOB Application No. 102084520)

Adopted by the Board of Standards and Appeals, August 25, 2009.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term for a special permit (§73-36) which expired on June 1, 2008 for the operation of a Physical Culture Establishment (*Bodhi Fitness Center*); Waiver of the Rules. M1-1/C2-2 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on June 1, 2008, and an amendment to reflect a change in the owner and operator of the PCE; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on July 28, 2009 and August 11, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the PCE is located on the east side of Prince Street between 35th Avenue and Northern Boulevard, partially within an M1-1 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is located on a portion of the first floor of a one-story commercial building; and

WHEREAS, the PCE has a total floor area of 8,962 sq. ft. on the first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 11, 2002 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building for a term of ten years, to expire on June 1, 2008; and

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

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Bodhi Fitness; 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 hours of operation for the PCE will be Monday through Friday, 24 hours per day, and Saturday and Sunday, from 7:00 a.m. to 12:00 a.m.; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 11, 2002, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 1, 2008, to expire on June 1, 2018; *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 May 20, 2009”-(4) sheets; and *on further condition*:

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THAT the term of this grant shall expire on June 1, 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 conditions from prior resolutions not specifically waived by the Board remain in effect;

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

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

(DOB Application No. 401213156)

Adopted by the Board of Standards and Appeals, August 25, 2009.

271-81-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term for a special permit (§73-36) which expired on October 6, 2006 for the operation of a Physical Culture Establishment (*New York Health and Racquet Club*); Amendment to legalize incidental alterations made to the interior layout; Extension of Time to obtain a Certificate of Occupancy which expired on October 31, 2001 and Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 110/112 West 56th Street, Block 1008, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for decision, hearing closed.

416-87-BZ

APPLICANT – Slater & Beckerman, LLP for Trustees of Columbia University in the City of New York, owners.

SUBJECT – Application June 29, 2009 – Extension of Term of a Variance (§72-21) for a automobile repair shop (UG16) which expired on June 27, 2009 and an Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009. R7-2/C6-1 zoning district.

PREMISES AFFECTED – 547-551 West 133rd Street, interior lot north side of 133rd Street, between Broadway and Amsterdam Avenue, Block 1987, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Neil Weisbard.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for decision, hearing closed.

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.

SUBJECT – Application April 20, 2009 – Extension of Term for the continued use of a gasoline service station (*Shell*) which expired on July 16, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on July 16, 2000; Amendment to legalize modification to the building; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy Bachan.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for decision, hearing closed.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term for a Variance (§72-21) for an automotive repair facility (UG 16B), which expired on November 29, 2007; Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999; Waiver of the Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

MINUTES

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. Zoning District C6-1.

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

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for an adjourned hearing.

APPEALS CALENDAR

196-09-BZY

APPLICANT – Ping C. Moy, for 174 Clermont Avenue, LLC, owner.

SUBJECT – Application June 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 174 and 176 Clermont Avenue, west side of Clermont Avenue, Block 2074, Lots 37 and 39, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in *The City Record*, and then to decision on August 25, 2009; and

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

WHEREAS, the subject site is located on the west side of Clermont Avenue, between Myrtle Avenue and Willoughby Avenue, in a C4-1 zoning district; and

WHEREAS, the subject site has a frontage of approximately 50’-0” and a depth of 75’-11”, with an irregular 24’-4” by 19’6” plot at the northern portion of the rear of the site, and a total lot area of 4,263 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story nine-unit residential building (the “Building”); and

WHEREAS, the site was initially proposed to be

developed with a six-story ten-unit residential building, however, on December 23, 2008, the Department of Buildings (“DOB”) approved a post-approval amendment to the original plans; the only change to the plans was the reduction in the number of total units from ten to nine; and

WHEREAS, the Building is proposed to have a total floor area of 12,755 sq. ft. (3.0 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters as to floor area and building height; and

WHEREAS, on June 11, 2007, New Building Permit No. 302296076-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on July 25, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning, which rezoned the site from R6 to R6B; and

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

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

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

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

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

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

WHEREAS, by letter dated July 15, 2009, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of July 25, 2009 has been considered; and

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes the completion and enclosure of the structure, the completion of roofing, the installation of windows, and the near completion of drywalling, plumbing and sprinkler systems, and electrical systems; and

WHEREAS, the applicant further states that only minor finishing work remains on the proposed building; and

WHEREAS, in support of this statement the applicant

has submitted the following: a construction contract, construction documents indicating the work completed and work remaining; a breakdown of the construction costs by line item and percent complete; an affidavit from the vice president of the construction company enumerating the completed work; copies of cancelled checks; and photographs of the building’s interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before July 25, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures and irrevocable commitments for the development to date are \$2,893,755, or approximately 96 percent of the \$3,001,005 cost to complete; and

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

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

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

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

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 302296076-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 25, 2011.

Adopted by the Board of Standards and Appeals, August 25, 2009.

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

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COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for an adjourned hearing.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior zoning district. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for an adjourned hearing.

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four-story dwelling located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140' north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Margaret R. Garcia.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for decision, hearing closed.

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.

SUBJECT – Application March 11, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R7-1/C1-2 zoning district. R7B/C1-3 zoning district.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik, Victor, Jon Yang.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for decision, hearing closed.

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

178-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 120 St. Marks LLC, owner;

O. Moscovich, D.V.M., P.C., lessee.

SUBJECT – Application June 1, 2009 – Appeal contesting an Order of Closure issued by the Department of Buildings that the use of the cellar at the subject premises as a Veterinarian's Office (UG6) constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.1. R8B zoning district.

PREMISES AFFECTED – 120 St. Marks Place (East 8th street), south side of St. Marks Place, Block 435, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner and Ian Rasmussen.

For Administration, Juliet Mercer.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 25, 2009
1:30 P.M.**

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

ZONING CALENDAR

203-07-BZ

CEQR #08-BSA-014Q

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

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 23, 2009, acting on Department of Buildings Application No. 402635403, reads, in pertinent part:

- “1. Residential Floor Area Ratio (F.A.R.) is contrary to ZR 23-142;
2. Residential Open Space is contrary to ZR 23-142 . . .”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within an R6/C2-2 zoning district, the construction of a 12-story and cellar mixed-use commercial/community facility/residential building with an FAR of 4.67 and an open space of 18 percent, which is contrary to ZR § 23-142; and

WHEREAS, the applicant initially proposed to construct a 13-story 5.02 FAR building with retail use on the first floor, parking in the cellar and on the second floor, medical offices on the third and fourth floors, recreation space on the fifth floor, and residential use on the sixth through thirteenth floors; the proposal required waivers for community facility floor area and parking; and

WHEREAS, in response to issues raised by the Board, the applicant revised the proposal to reflect a 4.79 FAR

building, which included a reduction in the amount of medical office floor area, which eliminated the need for a community facility floor area and total floor area waiver, the second floor was redesigned to include parking and medical offices, and the third floor was to be occupied by recreational space; residential use remained on the upper floors; the proposal required waivers for residential floor area, open space, and parking; and

WHEREAS, the final iteration of the proposal reflects a 12-story 4.67 FAR (3.46 FAR for residential use) building with retail on the first floor, medical offices and parking on the second floor, and residential use on the third through twelfth floors; the proposal requires waivers for residential floor area and open space; the applicant reduced the amount of medical office space and increased the amount of parking so that no parking waiver is required; and

WHEREAS, a residential FAR of 3.46 is proposed (an FAR of 2.42 is the maximum permitted for residential use for a height factor building in an R6 zoning district) and an open space of 18 percent will be provided (32 percent is the minimum required); and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with continued hearings on December 16, 2008, January 27, 2009, March 17, 2009, April 28, 2009, May 19, 2009, July 14, 2009, and July 21, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of the application, citing concerns about the proposal’s compatibility with the neighborhood, primarily related to the parking waiver and potential impacts a parking reduction might have on the surrounding area; and

WHEREAS, the Borough President recommends disapproval of the application based on the same concerns as the Community Board; and

WHEREAS, the Board notes that the Community Board and Borough President recommendations were based on the initial proposal, which included the requirement for a parking waiver; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the site is the subject of a prior Board grant; in February 1964, under BSA Cal. No. 817-63-BZ, the Board granted an application for the reconstruction of an existing automotive service station at the site; and

WHEREAS, the applicant states that the station was demolished in 1986 and the site has since been occupied by other commercial uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable

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regulations: (1) the site is contaminated and requires environmental remediation, (2) there is a high water table at the site, and (3) there are poor soil conditions; and

WHEREAS, as to the contamination, the applicant states that the site was formerly occupied by an automotive service station since 1934 and until 1986; and

WHEREAS, the applicant represents that the New York State Department of Environmental Conservation (DEC) issued Spill Number 9209640 in November 1992 to the site following a review of a Phase II investigation conducted by the applicant's consultant; the Phase II report indicates that soil and groundwater contamination exists at the site which was apparently caused by leaking underground petroleum storage tanks; and

WHEREAS, the applicant represents that it has already expended more than \$100,000 towards efforts to remediate the groundwater and free product contamination at the site; and

WHEREAS, the applicant represents that in order to satisfy DEC requirements, it will have to remove all of the contaminated soil at the site; and

WHEREAS, the applicant estimates that the costs associated with soil removal, transporting soil from the site, vapor extraction, and further monitoring and testing, amounts to approximately \$931,000; and

WHEREAS, as to the high water table, the applicant states that, due to the site's adjacency to sizeable park land, namely Kissena Corridor Park, water is encountered at a high level; and

WHEREAS, the applicant provided a boring sample analysis which reflects that ground water is detected at depths between 4.35 and 25.10 feet; and

WHEREAS, the applicant represents that the presence of water at a high level contributes to additional construction costs, including those associated with dewatering the site during and after construction; and

WHEREAS, as to soil conditions, the applicant provided a boring report, which reflects that there is a poor soil condition at the site; and

WHEREAS, specifically, the site suffers from poor load-bearing soil to a depth of greater than 13 feet; and

WHEREAS, the applicant represents that the soil condition requires that piles be installed to support the proposed building and that there are approximately \$700,000 in premium costs associated with installing steel piles, that would not be incurred if the soil condition were not poor; and

WHEREAS, the applicant also submitted a letter from a contracting firm documenting the costs of construction at a site with good soil and a letter from a structural engineer stating that the premium costs associated with building on the soil at the site would be incurred regardless of the building type; and

WHEREAS, at the Board's request, the applicant submitted a site plan reflecting the extent to which the piles would be required for the proposed construction compared to the piles that would be required for an as-of-right building; and

WHEREAS, the applicant represents that the additional residential FAR and resultant reduction of open space are required to compensate for the increased construction costs specifically the cost of remediation and the premium

foundation costs and dewatering costs associated with the subsurface soil conditions and high water table; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an 11-story as-of-right 3.98 FAR mixed-use building under height factor zoning and (2) a 13-story 5.02 FAR mixed-use building (the "Original Proposal"); and

WHEREAS, the applicant concluded that the as-of-right scenario would not result in a reasonable return, however, the Original Proposal would realize a reasonable return; and

WHEREAS, the Board expressed concerns about the as-of-right scenario, which included a residential FAR limited to 2.3, specifically noting that the applicant has the option to build pursuant to Quality Housing regulations which would allow a conforming development to increase the residential FAR to a maximum of 3.0 and the total FAR to 4.8, with certain street wall and building height restrictions; and

WHEREAS, the Board expressed concerns related to the program for the proposal, which included additional FAR resulting from the inclusion of speculative community facility space; and

WHEREAS, finally, the Board was not convinced that the amount of relief being sought was directly related to the site's unique conditions and hardship costs; and

WHEREAS, in response to the Board's concerns, the applicant provided an additional feasibility analysis for an as-of-right Quality Housing scenario at 4.12 FAR, which maximizes the residential FAR and a 4.12 FAR as-of-right Quality Housing scenario without the additional hardship costs; and

WHEREAS, the applicant clarified to the Board that the as-of-right Quality Housing scenario could not accommodate the maximum total FAR due to the building height limit of seven stories and the need to provide parking above grade in lieu of a sub-cellar level parking (which would not be feasible due to sub-surface conditions); and

WHEREAS, the applicant concluded that the as-of-right scenario would result in a loss because of the premium costs associated with the site's unique physical conditions, but that the as-of-right building on a hypothetical site without unique conditions would realize a reasonable rate of return; and

WHEREAS, although the earlier iterations of the proposal would result in a reasonable rate of return, as discussed below, the earlier proposals, including the 13-story 5.02 FAR mixed-use building, required additional waivers and do not reflect the minimum required variance; and

WHEREAS, accordingly, only the proposed 12-story 4.67 FAR mixed-use building both reflects the minimum required variance and results in a reasonable rate of return; and

WHEREAS, based upon its review of the submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning

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requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that there are residential buildings with greater height and bulk than the proposed building, including several buildings with greater than 20 stories and another building with a height of 17 stories within several hundred feet of the site at the intersection of Main Street and Dahlia Avenue; and

WHEREAS, additionally, the applicant represents that commercial use is commonly found on the first floor of nearby buildings; and

WHEREAS, as to the open space, the Board notes that the applicant is providing all of the required yards and that the open space is compatible with that of nearby development; and

WHEREAS, additionally, the Board notes that (1) the proposal reflects the addition of only 28 residential units and (2) the reduction in open space is offset by approximately 5,887 sq. ft. of open recreation space on the third floor and the close proximity of Kissena Park across the street; and

WHEREAS, further, the Board notes that the applicant has revised the application to provide all of the required parking and that, although the residential FAR exceeds what would be permitted for the subject development in the subject zoning district, it notes that the community facility and commercial FAR are below the maximum permitted and that the total building FAR and bulk are within zoning district parameters; and

WHEREAS, based upon the above, the Board finds that this action will not 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested a parking waiver in addition to the residential FAR and open space waivers; and

WHEREAS, specifically, the applicant initially requested a 13-story building with an FAR of 5.02 and without the required parking; and

WHEREAS, the Board directed the applicant to revise the application to eliminate the request for a waiver for seven of the required 58 parking spaces and to reduce the floor area; and

WHEREAS, in response, the applicant redesigned the building to include all of the required parking and to reduce the height to 12 stories and the total FAR to 4.67; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; 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. 08BSA014Q, dated August 17, 2007; 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 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, in April 2006, DEC directed the applicant to conduct quarterly groundwater monitoring, monthly free product monitoring and that a remedial action plan be provided; and

WHEREAS, DEC has received and approved a revised Remedial Investigation Work Plan (RIWP) dated April 9, 2009 which was submitted by the applicant's consultant; this plan recommended that additional groundwater monitoring wells be installed; and

WHEREAS, a July 27, 2009 Remedial Investigation Report (including the most recent groundwater monitoring results) was prepared by the applicant's consultant in accordance with the implementation schedule contained in the approved Revised RIWP; 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; 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, based on the continuation of groundwater monitoring and other remediation activities as requested by DEC and with conditions as stipulated below, 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 partially within an R6 zoning district and partially within an R6/C2-2 zoning district, the construction of a 12-story and cellar mixed-use commercial/community facility/residential building with an FAR of 4.67 and an open space of 18 percent, which is contrary to ZR § 23-142, *on condition* that any and all work shall substantially conform to

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drawings as they apply to the objections above noted, filed with this application marked "Received August 11, 2009"- (11 sheets and *on further condition*:

THAT the floor residential floor area of the building shall be limited to 3.46 FAR, the total floor area be limited to 4.67 FAR;

THAT a minimum of 58 parking spaces (53 for parking and five for queuing) and a minimum open space of 18 percent shall be provided;

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

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

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

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

Adopted by the Board of Standards and Appeals, August 25, 2009.

173-08-BZ

CEQR #09-BSA-001Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§72-21) to allow a 12-story hotel building containing 99 hotel rooms; contrary to floor area regulations (§117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 28, 2008, acting on Department of Buildings Application No. 410041431, reads in pertinent part:

"Proposed building for transient hotel (UG 5) located in M1-5/R7-3 of area "C" by exceeding maximum permitted FAR of 5.00 is contrary to section 117-522 ZR;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza

Subdistrict Area C, the construction of a ten-story and cellar hotel which does not comply with floor area regulations, contrary to ZR § 117-522; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 21, 2009, June 9, 2009 and July 21, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 2, Queens recommended disapproval of the applicant's original proposal; and

WHEREAS, the subject site is located on the northeast corner of the intersection at Crescent Street and 43rd Avenue, in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C; and

WHEREAS, the site is an irregularly shaped corner lot with approximately 81 feet of frontage on Crescent Street and 25 feet of frontage on 43rd Avenue, and a total lot area of 4,414 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a ten-story, 88-unit hotel (UG 5) with a total floor area of approximately 27,563 sq. ft. (6.25 FAR); the maximum permitted floor area is 22,070 sq. ft. (5.0 FAR); and

WHEREAS, the applicant initially proposed a twelve-story, 99-unit hotel with a floor area of 35,109 sq. ft. (7.95); and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the site's small size and irregular shape; (2) the site's location adjacent to an overpass leading to the Queensboro Bridge; and (3) the site's proximity to subsurface Metropolitan Transportation Authority ("MTA") construction; and

WHEREAS, as to the site's size and irregular shape, the applicant states that the subject site has a lot area of only 4,414 sq. ft., and is one of only seven irregular corner lots in all of Area C of the Queens Plaza Subdistrict; and

WHEREAS, the applicant states that the small size and irregular shape of the lot results in an inefficient design for residential use; and

WHEREAS, the applicant states that residential use is further restricted by the site's proximity to an overpass leading to the Queensboro Bridge; and

WHEREAS, specifically, the applicant states that the subject site is located immediately adjacent to the entrance ramp to the Queensboro Bridge which is approximately two stories in height and is heavily-traveled at all hours; and

WHEREAS, the applicant represents that the high volume of traffic and corresponding noise resulting from the site's proximity to the entrance ramp inhibits the residential use of the property; thus making a hotel the only viable use for the site; and

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WHEREAS, the applicant states that the small size and irregular shape of the lot also results in an inefficient design for hotel use, as it limits the number of possible rooms per floor in a hotel development; and

WHEREAS, specifically, the irregular configuration of the lot results in a plan with 11 guest rooms on a typical floor and a maximum of 56 guest rooms in an eight-story complying hotel; and

WHEREAS, the applicant submitted plans indicating that a rectangular lot with the same lot area could accommodate a complying building with floor plates that could accommodate 14 guest rooms on a typical floor and a total of 84 guest rooms in an eight-story hotel; and

WHEREAS, therefore, the applicant concludes that the irregularity of the site directly results in the inability to efficiently accommodate rooms and increases the amount of square footage that is occupied by corridors, circulation space, and the building core; and

WHEREAS, as to the site's proximity to subsurface MTA construction, the Board disagrees with the applicant's assertion that the presence of subsurface MTA construction is a unique physical condition; and

WHEREAS, the Board observes that the subsurface MTA construction is a condition that affects a significant number of properties in the surrounding area; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions cited by the applicant, namely the small size and irregular shape of the lot and the site's location adjacent to an overpass leading to the Queensboro Bridge, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a 4.98 FAR complying residential development; (2) a 56-room complying hotel development; (3) a hypothetical 84-room hotel on a rectangular lot with the same lot area as the subject site; (4) the original proposal for a 99-room hotel; (5) an 88-room hotel with significant amenity space; and (6) the proposed development; and

WHEREAS, the feasibility study concluded that both a complying residential development and a complying hotel development would generate a negative rate of return; and

WHEREAS, the feasibility study further concluded that the hypothetical 84-room hotel, the 99-room hotel, the 88-room hotel with significant amenity space, and the proposed development would realize a reasonable rate of return; and

WHEREAS, the Board notes that while several of the studied proposals provided a reasonable rate of return, the proposed hotel development represents the minimum variance necessary to afford the owner relief; and

WHEREAS, as to the hypothetical site, the Board notes that the feasibility study supports the applicant's contention that the size and shape of the subject site constrain it from developing a complying hotel that provides a reasonable rate of return; and

WHEREAS, the Board further notes that although it does not consider the site's proximity to subsurface MTA construction to be a unique physical condition, it acknowledges

that the costs associated with developing the site to ensure that there are no adverse affects on the subsurface MTA construction are legitimate construction costs which factor into the analysis of the applicant's ability to realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the only waiver requested is for floor area, as the proposal complies with all other bulk regulations; and

WHEREAS, the applicant represents that the proposed bulk and use are consistent with the surrounding area, which is characterized by a mix of uses and an abundance of multi-story buildings; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an eight-story hotel located one block north of the subject site, on the corner of Crescent Street and 42nd Road, and a 16-story office building located two blocks west of the site, on the corner of 24th Street and 44th Road; and

WHEREAS, the applicant notes that the subject site is located on the border of an M1-6/R10 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area A-2, where the proposed development would be permitted as-of-right due to the permitted FAR of 12.0; and

WHEREAS, the Board notes that the applicant revised its proposal to significantly reduce the requested FAR for the proposed hotel, thus making it more compatible with the FARs of buildings in the surrounding area; and

WHEREAS, based upon the above, the Board finds that this action will not 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 Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions; and

WHEREAS, the applicant initially proposed a 99-unit hotel with a floor area of 35,109 sq. ft. (7.95 FAR), a significant amount of which was reserved for hotel amenities, such as a bar lounge and retail space; and

WHEREAS, at hearing, the Board questioned the applicant's need for the number of rooms and the amenity space provided in the plans; and

WHEREAS, in response, the applicant revised its plans by removing the requested amenities and providing an 88-unit hotel with a floor area of approximately 27,563 sq. ft. (6.25 FAR); and

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WHEREAS, the applicant states that the requested FAR is necessary to provide a sufficient number of hotel rooms to make the development financially feasible; and

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

WHEREAS, based upon the above, 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 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-001Q, dated October 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 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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in an M1-5/R7-3 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C, the proposed construction of a ten-story and cellar hotel (UG 5) which does not comply with floor area regulations, contrary to ZR § 117-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 8, 2009"–(8) sheets; and *on further condition*:

THAT the building parameters shall be: a maximum floor area of approximately 27,563 sq. ft.; and an FAR of 6.25;

THAT the elevator bulkhead shall comply with all applicable regulations of the Zoning Resolution and Administrative Code;

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

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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, August 25, 2009.

9-09-BZ CEQR #09-BSA-063Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.
SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. M1-1 zoning district.

PREMISES AFFECTED – 63-03 Fresh Pond Road, east side of Fresh Pond Road, 269.8' south of Metropolitan Avenue and Fresh Pond Road, Block 3608, Lot 14, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 22, 2008, acting on Department of Buildings Application No. 410164432, reads in pertinent part:

“Physical culture establishment requires special permit from BSA as per Section 73-36 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district zoning district, the legalization of a physical culture establishment (PCE) on a portion of the first floor of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 28, 2009, and then to decision on August 25, 2009; and

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

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

WHEREAS, the subject site is located on the north side of Fresh Pond Road between Metropolitan Avenue and

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Traffic Avenue, in an M1-1 zoning district; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE has a total floor area of 11,730 sq. ft. on the first floor of the building; and

WHEREAS, the PCE is operated as Force Fitness Club; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 10:30 p.m.; Saturday, from 7:00 a.m. to 7:00 p.m.; and Sunday, from 7:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since November 1, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between November 1, 2008 and the date of this grant; 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. 09BSA063Q, dated June 8, 2009; 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; 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 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment on the first floor of an existing one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 14, 2009"- Two (2) sheets and *on further condition*:

THAT the term of this grant shall expire on November 1, 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 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, August 25, 2009.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a physical culture establishment in a portion of cellar and first floor in a three-story building. C2-3 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

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COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the redevelopment of a commercial building for residential use. Six residential floors and six dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Alexander Harrow.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for decision, hearing closed.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for decision, hearing closed.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for continued hearing.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) to legalize and enlarge a single family home, contrary to floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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APPEARANCES –

For Applicant: Eric Palatnik and Lewis E. Garfindel.

For Opposition: Stuart A. Klein and Marcus Fuchs.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23 -47), and perimeter wall height (§23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

49-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kolliel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #18M

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Saul Needle CB18, Dorothy Turano, D.M. CB18, Thomas Hernandez, CB18, Paul Coriale, CB18 and Senator Gruger.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Rita Mantell, Boris, Susan Klappe and Judith Baron.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

166-09-BZ

APPLICANT – Slater & Beckerman, for Harry J. Brainum, Jr., Inc., owner.

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area, height and setback and

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permitted obstruction in rear yard regulations (§43-12, §43-43, §43-23(b)). M1-1 District.

PREMISES AFFECTED – 360-366 McGuinness Boulevard and 237 Freeman Street, northeast corner of Freeman Street and McGuinness Boulevard, Block 2506, Lots 2, 4, 5, 52, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant:

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for decision, hearing closed.

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.