
BULLETIN

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July 30, 2009

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New Case Filed Up to July 21, 2009

228-09-A

37-45 98th Street, East side of 98th Street, approximately 200 feet north of 38th Avenue., Block 1761, Lot(s) 48,49 (tent), Borough of **Queens, Community Board: 3**. Appeal for vested rights to continue development of the proposed building.

229-09-A

37-47 98th Street, East side of 98th Street, approximately 200 feet north of 38th Avenue., Block 1761, Lot(s) 48,49 (tent), Borough of **Queens, Community Board: 3**. Appeal for vested rights to continue development of the proposed building.

230-09-BZ

1700 White Plains Road, Northeast corner of the intersection of White Plains Road and Van Nest Avenue., Block 4033, Lot(s) 31, Borough of **Bronx, Community Board: 11**. Variance to allow three story, three family residential building, contrary to use regulations.

231-09-BZ

412-414 Greenwich Street, Southwest corner of Laight and Greenwich Streets, on the block bounded by Greenwich, Laight, Washington and Hubert Streets., Block 217, Lot(s) 17, Borough of **Manhattan, Community Board: 1**. Variance to permit the construction of a 6 story and penthouse residential building.

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

AUGUST 11, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 11, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

719-56-BZ

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

SUBJECT – Application July 14, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil), in a C2-1/R3-2 zoning district, which expires on November 10, 2009.

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

COMMUNITY BOARD #1SI

261-98-BZ

APPLICANT – Sheldon Lobel, P.C. for Steve Steigelfest, owner.

SUBJECT – Application May 29, 2009 – Extension of Term of a previously granted variance (§72-21) for the use of a UG16A warehouse for HVAC related uses in a residential district which expired on April 20, 2009; and an Amendment for the addition of a mezzanine level within the existing building in an R6B zoning district.

PREMISES AFFECTED – 193 20th Street, North side of 20th Street, between 4th and 5th Avenues. Block 637, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #7BK

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a two story building for commercial use (Use Group 6), previously granted by the Board pursuant to §72-21, located in an R-8 zoning district which is contrary to §22-00.

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

APPEALS CALENDAR

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.
SUBJECT – Application March 11, 2009 – Appeal seeking a determination that owner has acquired a common law vested rights to continue construction commenced under the prior R7-1/C1-2 zoning district regulations. Current 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

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – An appeal challenging Department of Buildings determination that the reconstruction of the existing non-complying subject building must be done in accordance with ZR Section 54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

196-09-BZY

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

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

CALENDAR

AUGUST 11, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 11, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance to allow hotel and retail uses below the floor level of the second story, contrary to use regulations §42-14(d)(2). M1-5B District.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the Legalization of an enlargement to an existing single family home. This application seeks to vary the side yard requirements (ZR §461) in an R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

183-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on a portion of the ground floor and cellar in an eight-story mixed-use building. The proposal is contrary to section 32-10. C4-5X district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

195-09-BZ

APPLICANT – Mark Levine, Esq., Herrick, Feinstein LLP, for Brooklyn Academy of Music, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Variance to waive the required rear yard (ZR §33-26) for a community facility building (Brooklyn Academy of Music). C6-1 zoning district.

PREMISES AFFECTED – 321 Ashland Place, east side of Ashland Place between Lafayette Avenue and Hanson Place, Block 2111, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 21, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Phillip Pollicina, owner.

SUBJECT – Application June 19, 2008 – Extension of term and Waiver for a previously granted variance pursuant to §72-21. The application seeks the authorization to continue operation of an existing food products manufacturing establishment (Use Group 17B) within a R4 zoning district. The most recent term expired on July 1, 2007.

PREMISES AFFECTED – 1108/10 Allerton Avenue, South side of Allerton Avenue between Laconia Avenue and Yates Avenue. Block 4456, Lot 47, Borough of the Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Elizabeth Safian.

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 term of a previously granted variance permitting a food products manufacturing establishment (Use Group 17B) within an R4 zoning district, which expired on July 1, 2007; and

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 21, 2009; and

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

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

WHEREAS, the site is located on the south side of Allerton Avenue, between Laconia Avenue and Yates Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 1, 1997 when, under the subject calendar number, the Board granted a variance to permit the structural alteration and enlargement of an existing one-story building used as a non-conforming bakery (Use Group 6A), and its conversion to a food products manufacturing establishment

(Use Group 17B), to expire on July 1, 2007; and

WHEREAS, the applicant represents that there have been no changes to the site; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on July 1, 1997, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 1, 2007, to expire on July 1, 2017, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received May 5, 2009”- (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 1, 2017;

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

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

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

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

(DOB App. No. 200377029)

Adopted by the Board of Standards and Appeals, July 21, 2009.

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72’ north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION

MINUTES

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an amendment to legalize a change in use from an auto sales establishment (Use Group 16) to commercial/retail use (Use Group 6); and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on June 23, 2009, and then to decision on July 21, 2009; and

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

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

WHEREAS, the site is located on the west side of Richmond Avenue, approximately 112 feet north of the corner formed by Richmond Avenue and Draper Place, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 1965 when, under BSA Cal. No. 1029-64-BZ, the Board granted a variance to permit the enlargement of an existing automotive service station in order to relocate the pump islands, curb cuts and driveway; and

WHEREAS, on March 6, 1968, under BSA Cal. No. 902-67-BZ, the Board granted a variance to permit the reconstruction of the automotive service station with accessory uses for a term of ten years; and

WHEREAS, subsequently the grant was amended and the term extended at various times; and

WHEREAS, on March 15, 1982, under BSA Cal. No. 746-81-BZ, the Board granted a variance to permit the enlargement and change in use of the accessory structure on the site into a retail store for a term of ten years; and

WHEREAS, subsequently the grant was amended and the term extended for five years; and

WHEREAS, most recently, on September 12, 2000, under BSA Cal. No. 303-99-BZ, the Board granted a variance to permit the legalization of an open and enclosed auto sales establishment and a proposed increase in floor area for a car wash and minor repairs with hand tools only (Use Group 16); and

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

WHEREAS, the applicant represents that a certificate of occupancy was not obtained due to delays related to the previous owner's difficulty in renting the site for automobile sales; and

WHEREAS, the applicant also seeks to legalize the change in use of the site from an auto sales establishment (Use Group 16) to a retail store and showroom (Use Group 6); and

WHEREAS, the applicant states that no change in the building floor area is being proposed; and

WHEREAS, the applicant represents that the proposed change in use will reduce the traffic impact on the surrounding area, as a retail use will generate less traffic than an automobile service station or car sales use; and

WHEREAS, in addition, the applicant seeks to convert the portion of the lot area formerly used for car sales into 15 additional parking spaces; and

WHEREAS, the applicant also proposes to eliminate the middle of three curb cuts fronting Richmond Avenue to enhance traffic circulation at the site; and

WHEREAS, at hearing, the Board questioned why the applicant made changes to the façade and roof of the building in contravention of the BSA-approved plans; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that an existing flat parapet on the roof had to be extended to cover the entire façade of the building in response to severe water damage on the interior of the building caused by the connection between the original roof and the extension indicated on the BSA-approved plans; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy and amendment for a change in use are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated September 12, 2000, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to January 21, 2010, and to permit the change in use from auto sales (Use Group 16) to commercial/retail use (Use Group 6); *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 26, 2009"-(1) sheet, "May 11, 2009" and "June 9, 2009"-(1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 21, 2010;

THAT all signage shall comply with C1 zoning district regulations;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 500455134)

Adopted by the Board of Standards and Appeals July 21, 2009.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously

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granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district.

The previous term expired on September 23, 2007.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.

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

COMMUNITY BOARD #15BK

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 August 11, 2009, at 10 A.M., for decision, hearing closed

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty Company, owner; ExxonMobil Oaks Corporation, lessee.

SUBJECT – Application May 21, 2009 – Extension of Term to permit the continued operation of a gasoline service station (Mobil) which expires on February 2, 2010 in an R4/C1-2 zoning district.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lots 68 and 63, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 August 18, 2009, at 10 A.M., for decision, hearing closed

32-91-BZ

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.

SUBJECT – Application May 5, 2009 – Extension of Term and waiver of a Special Permit for a (UG16) Gasoline Service Station (Coastal) in a C2-4/R7A zoning district which expired on May 19, 2007.

PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

203-00-BZ

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

SUBJECT – Application April 29, 2009 – Application to amend the variance granted in 2001 for BSA Calendar No. 203-00-BZ. The Amendment is to permit the conversion of three additional condominium units (designated originally for commercial use) on the second floor to three residential units. The proposal is contrary to sections 42-10 (use) and 42-133 (no new dwelling units allowed). M1-5 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: Jay Segal and Bruce Roffine.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for continued hearing.

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (72-21) for the enlargement of an existing Synagogue and School (Beth Gavriel), in an R1-2 zoning district, which expired on June 7, 2009.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

MINUTES

REGULAR MEETING
TUESDAY AFTERNOON, JULY 21, 2009
1:30 P.M.

APPEALS CALENDAR

296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.

SUBJECT – Application November 25, 2008 – Proposed four-story, six family dwelling with a community facility located within the bed of a mapped street contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 45-02 111th Street, east side of 45th Avenue, 100' south of intersection of 111th Street and 45th Avenue, Block 2001, Lot 37, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

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

179-09-A

APPLICANT – Eric Palatnik, P.C., for Zaki Turkieh, owner.
SUBJECT – Application June 1, 2009 – Proposed construction of a one story extension to an existing commercial building not fronting on a mapped street contrary to General City Law Section 36.

PREMISES AFFECTED – 252-02 Rockaway Boulevard, corner of First Street and Rockaway Boulevard, Block 1392, Lot 69, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Trevis Savage.

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 August 11, 2009, at 10 A.M., for decision, hearing closed

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

ZONING CALENDAR

287-06-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT – Application October 27, 2006 – Variance (§72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

PREMISES AFFECTED – 32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:0

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner dated September 29, 2006, acting on Department of Buildings Application No. 401515017, reads:

“Proposed conversion of one dwelling unit in a new building previously approved exclusively for residences to a community facility use in an R5 zone without two side yards complying with Section 24-35 of the Zoning Resolution is not permitted.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R5 zoning district, the legalization of a mixed-use two-family/community facility building that does not provide the required side yards, contrary to ZR § 24-35; and

WHEREAS, procedurally, acting on a prior objection issued by the Queens Borough Commissioner on November 24, 2004, the applicant filed an application under BSA Cal. No. 380-04-BZ, to permit the legalization of the subject building; and

WHEREAS, on the scheduled decision date, January 10, 2006, the applicant withdrew the application; and

WHEREAS, the applicant subsequently re-filed the application for the same relief under a new calendar number, BSA Cal. No. 287-06-BZ; and

WHEREAS, on August 7, 2007, the Board ultimately dismissed the application, under BSA Cal. No. 287-06-BZ for lack of prosecution; and

WHEREAS, the applicant filed a proceeding, BK

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Corporation v. Board of Standards and Appeals (Index No. 22581/2007) pursuant to Article 78 challenging the Board's determination and the Board stipulated to place the application on the zoning calendar to consider the applicant's variance request; thus, the subject application was restored to the calendar and proceeded in the public hearing process; and

WHEREAS, a public hearing was held on this application on March 17, 2009 after due publication in *The City Record*, with a continued hearing on June 9, 2009 and then to decision on July 21, 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 1, Queens, recommends that the application be approved with the stipulation that the first floor use be limited to a doctor's office; and

WHEREAS, the Queens Borough President recommends approval of this application; and

WHEREAS, the Board notes that the Borough President's recommendation is associated with the 2004 application, but that the applicant entered the recommendation into the record of the current application; and

WHEREAS, the zoning lot has approximately 9,594 sq. ft. of lot area, and is located on the northeast corner of 23rd Street and 33rd Avenue; and

WHEREAS, the subject building (the "Subject Building") at the referenced address is one of five attached mixed-use buildings on individual tax lots within the larger zoning lot; the Subject Building is the furthest into the mid-block and abuts an adjacent building; and

WHEREAS, the subject block is divided by a zoning district boundary line; the southern portion of the block is within an R5 zoning district and the northern portion of the block is within an R6B zoning district on its northerly half; and

WHEREAS, the applicant represents that the northerly half of the block was formerly within the R5 zoning district, but that a zoning map amendment adopted by the City Planning Commission on January 24, 2001 changed the zoning to R6B; and

WHEREAS, the applicant represents that the zoning lot was formerly occupied by a one-story non-conforming automotive repair shop and storage garage; and

WHEREAS, the repair shop and garage were demolished in June 2002 in anticipation of a five-building residential development (with no community facility use); and

WHEREAS, the applicant states that the Department of Buildings (DOB) approved plans for this residential development on September 20, 2002, and issued permits on February 14, 2003; thereafter, construction commenced; and

WHEREAS, however, this development proposal was based upon the assumption that the subject block was still entirely within an R5 zoning district, which, because of the

above-mentioned zoning change, was not the case; and

WHEREAS, thus, the architect, filing under DOB's Professional Certification program, assumed that the "predominantly built up area" ("PBA") bulk provisions set forth at ZR § 23-141(c) were applicable; and

WHEREAS, ZR § 12-10 defines a PBA, in part, as a block entirely within an R4 or R5 zoning district; and

WHEREAS, the PBA provisions allow for a greater Floor Area Ratio (FAR) than permitted otherwise; specifically, a FAR of 1.65 is allowed for a PBA in an R5, as opposed to a FAR of 1.25 on a block that does not meet the PBA definition; and

WHEREAS, since the subject block had been partially rezoned to R6B at least one and a half years prior to the plan approval and permit issuance, it no longer met the PBA definition; and

WHEREAS, therefore, an FAR of 1.65 was not allowed at the time the plan approval and permit were obtained; and

WHEREAS, consequently, the approval and permit that the architect obtained through the Professional Certification program erroneously allowed for a greater residential FAR than permitted by the ZR; and

WHEREAS, a DOB audit on February 25, 2004 revealed this error, and construction at the site was stopped by DOB; and

WHEREAS, the applicant represents that, by that point, the construction of the development was almost complete; and

WHEREAS, in order to meet the reduced residential FAR, the applicant eliminated one residential unit in each of the five buildings, and replaced them with a community facility use (medical office); and

WHEREAS, inclusion of community facility space at the first floor level would increase the permitted FAR over the entire development to 2.0, while decreasing the actual residential floor area to within the permitted maximum FAR of 1.25; and

WHEREAS, however, as noted above, the subject building was built abutting an adjoining building's wall; and

WHEREAS, because the applicant proposes to convert the first floor unit into community facility use, it must provide an eight-ft. side yard where it now currently abuts this wall; and

WHEREAS, the applicant contends that while the FAR issue has been resolved, compliance with the side yard requirement would involve the partial demolition of the subject building, which would result in a significant financial loss both due to the construction costs and the reduced revenue from the loss of a wider building; and

WHEREAS, each of the five buildings is three stories, with cellar; and

WHEREAS, per the certificates of occupancy, the first floor of each of 32-14 through 32-20 23rd Street (the "Four Buildings") has a community facility use on the first floor and a two-family home on the second and third floors; and

WHEREAS, the Board notes that the applicant states that DOB has issued certificates of occupancy for the Four

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Buildings; the applicant is not seeking any variance for the Four Buildings; and

WHEREAS, accordingly, the Board notes that the subject of this variance application is the northernmost building at 32-12 23rd Street (the Subject Building) and the analysis of the findings, other than the ZR § 72-21(b) finding, is generally limited to the Subject Building; and

WHEREAS, the applicant alleges that a variance should be granted on the basis that: (1) there are actual unique physical conditions on the site that lead to hardship; and (2) significant expenditures were made in good faith reliance on DOB's permitting action; and

WHEREAS, as set forth below, the Board is unconvinced by either argument; and

WHEREAS, as to the first contention, the applicant alleges that the following are unique physical conditions that lead to practical difficulties and unnecessary hardship in developing the subject lot in strict compliance with the subject side yard requirement: (1) the history of non-conforming use at the site, (2) ZR §§ 52-31 and 54-31 would have allowed a change in use of the former auto repair shop at the site to community facility use without regard to the side yard condition and the proposed residences could have been constructed above the former auto repair building, (3) the conditions of adjacent development, (4) the water table and the proximity to a 100-year flood boundary line, and (5) there was environmental contamination on the site that cost approximately \$56,000 to remediate; and

WHEREAS, as to the history of non-conforming use at the site, the applicant states that prior to the construction of the Subject Building and the Four Buildings, the site was occupied by a one-story non-conforming automotive repair shop and storage garage with 100 percent lot coverage; and

WHEREAS, the applicant states that the historic use of the site for such use results in a commercial character for the site, which affects the desirability of the Subject Building for residential use; and

WHEREAS, the applicant cites to three Board variance cases: BSA Cal. Nos. 354-03-BZ, 261-03-BZ, and 209-03-BZ to support an argument for purported precedent; and

WHEREAS, the cited variance cases involve, respectively (1) the establishment of a non-conforming physical culture establishment in the cellar of an existing mixed-use building, (2) the legalization of a one-story automotive repair shop on an irregular lot, and (3) the establishment of a physical culture establishment in portions of a residential building; and

WHEREAS, the Board notes that these cases all (1) involved uses that were not permitted as of right in the subject zoning districts and (2) relied on arguments about the compatibility of the proposed use with existing uses; and

WHEREAS, because the proposed community facility use is as of right in the subject zoning district, a discussion about a non-conforming prior use is misplaced; and

WHEREAS, accordingly, the Board does not find the cited Board cases to be relevant to the subject case, which involves the conversion of a residential unit to a community facility unit in a zoning district that permits both uses as of

right on a site that was not formerly occupied by either; and

WHEREAS, additionally, the Board notes that the applicant does not make any assertions that the subject site is incompatible with or infeasible for residential use, as there are at least ten dwelling units within the Four Buildings and the Subject Building, along with community facility uses, per the certificates of occupancy; and

WHEREAS, the Board notes that the applicant does not propose to re-establish a commercial use, similar to that which may have formerly occupied the site and that the applicant does not assert that the Subject Building is only compatible with the proposed community facility use, which, again, would be permitted as of right provided it complied with all bulk parameters of the subject zoning district; and

WHEREAS, the Board understands that the applicant proposes to convert the use of the first floor unit from a residential use to a community facility use as a means to cure a side yard objection, and, thus finds that the applicant discussion of the findings for a use variance is confused; and

WHEREAS, the applicant erroneously likens the proposal to that of trying to establish the compatibility of a proposed non-conforming use with existing conforming uses; and

WHEREAS, as to the history of the site, the Board does not find the prior non-conforming status of the demolished auto repair building to be a unique physical condition that leads to a hardship in complying with the applicable community facility side yard requirement; and

WHEREAS, had the developer wished to proceed with a mixed-use residential/community facility development, the fact that a non-conforming use existed on the site would in no way have hindered a complying development; after demolition, the developer was left with a large vacant site upon which a complying development with required side yards could have been constructed as demonstrated in the multiple site plans provided with the applicant's feasibility study; and

WHEREAS, likewise, the fact that the prior building could have been maintained, with residences constructed on top, is not a unique physical condition that leads to hardship; rather, it is merely a description of an alternative development proposal that would have avoided the predicament that led to the instant variance application; and

WHEREAS, nor does the fact that ZR § 52-31 allows a change in use from a non-conforming use to a conforming use or that ZR § 54-31 allows for the enlargement of non-complying buildings, under certain conditions, have any relevance; and

WHEREAS, while ZR §§ 52-31 and 54-31 allow such changes to occur, reference to those provisions require that the non-conforming use and non-complying building remain; and

WHEREAS, here, the prior building occupied by the non-conforming use was demolished, and the applicant began construction on a vacant regularly-shaped site, than all rights to the non-conforming use were lost, rendering the applicant's argument meaningless; and

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WHEREAS, the Board therefore rejects any arguments that the previous non-conforming use and its non-complying side yards bears any relevance or hardship to the subject site and its ability to be developed with a conforming use and complying bulk conditions; and

WHEREAS, as to the adjacent development, the applicant asserts that the adjacency to a commercial use is a unique condition and that only 15 residential uses within a 400-ft. radius of the site are adjacent to commercial uses; and

WHEREAS, the applicant asserts that this condition contributes to a hardship at the site; and

WHEREAS, the Board reiterates that the applicant is not seeking a use variance or any waiver for the residential uses in the Subject Building, but is rather seeking a variance to eliminate a side yard requirement; and

WHEREAS, the Board notes that the applicant designed a building that, without the side yard, is actually closer to the purportedly incompatible adjacent commercial use than it would be if the side yard were provided; and

WHEREAS, the applicant refers to the approval of the vertical enlargement of the enlargement of the adjacent building at 21-34 Broadway on the lot line as evidence that DOB is not consistent with its approvals of side yard conditions in the zoning district; and

WHEREAS, the Board finds that the applicant's reference to Matter of Charles A Field Delivery Service, Inc. v. Lillian Roberts, 66 N.Y.2d 516, 498 N.Y.S.2d 111 (1985), a case that addresses an agency arriving at different outcomes when analyzing fact patterns deemed to be "indistinguishable," in this context is misplaced; and

WHEREAS, specifically, the applicant has not provided evidence that DOB's approval of the adjacent construction was based on the same set of facts as DOB's objection to the Subject Building; and

WHEREAS, the evidence submitted into the record suggests that the vertical enlargement of the pre-existing adjacent building for residential use is not factually similar to the development at the subject site; and

WHEREAS, additionally, the Board notes that Field Delivery states that agencies may correct erroneous interpretations; and

WHEREAS, the Board notes that adjacency to lot line buildings is a common condition in New York City and is thus not particularly unique, nor does it contribute to hardship; and

WHEREAS, the Board is not convinced that there is any nexus between the applicant's request for a side yard waiver and the presence of a commercial use with a lot line condition on the adjacent site; and

WHEREAS, as to the water table and flood zone, the applicant states that (1) the water table is approximately 15 feet below grade and (2) the site is 150 feet from the boundary of a 100-year flood area; and

WHEREAS, the applicant represents that these conditions make the construction of a sub-cellar cost-prohibitive; and

WHEREAS, the Board, which includes an expert

engineer, has reviewed the flood maps and notes that the site is approximately 150 feet from Zone X, which is described as an "area of moderate or minimal hazard from the principal source of flood in the area" and 500 feet from a 100-year flood zone AE; and

WHEREAS, further, the Board notes that none of the applicant's proffered building proposals include a sub-cellar and, thus, any reference to the inability to include such space is irrelevant to a hardship finding; and

WHEREAS, as to the environmental remediation costs, the applicant represents that the following factors contribute to hardship at the site: (1) the Phase 1 Environmental Site Assessment Report, dated March 21, 1998 discloses a spill which caused seepage into the adjacent building's cellar, (2) due to contamination, the demolition of the prior building was required, and (3) underground storage tanks were required to be removed; and

WHEREAS, the applicant identified \$41,000 in costs associated with the noted remediation; and

WHEREAS, the Board disagrees that the applicant has demonstrated that site remediation reaches a level at which it is unique or contributes to a hardship at the site; and

WHEREAS, specifically, the Board notes that the 1998 Phase 1 concluded that no further action was required after the 1996 oil spill (of less than 50 gallons) with seepage into the adjacent building; the report states that proper steps were taken and the spill was cleaned up, leaving no possibility of groundwater contamination; and

WHEREAS, further, the Board notes that a 2002 Phase 1 states that, although he did not perform minor clean-up or remove the underground storage tanks, the prior owner removed them from service; tests reflect that the semi-volatile organic compound contamination reading reflects very low concentrations, which are below EPA limits; and

WHEREAS, the Board notes that a November 2002 letter from the Department of Environmental Conservation is a reminder to register any existing tanks and is not evidence that there was a sub-surface contamination issue at the site; and

WHEREAS, as to remediation expenditure, the Board notes that checks written in mid-2003 to a wrecking company total \$41,000 as the applicant contends, but these costs likely include excavation as well as tank removal and even demolition of the prior building; and

WHEREAS, accordingly, those expenditures may not even all be attributed to remediation, but may be attributed to other more typical construction costs; and

WHEREAS, the applicant also claims that there are potentially an additional \$15,000 in remediation costs for a total of approximately \$56,000; and

WHEREAS, the Board notes that in the prior application associated with this case, the applicant stated that there were only \$30,000 in remediation costs, which represents seven-tenths of one percent of the development costs; and

WHEREAS, the Board notes that BSA Cal. No. 51-07-BZ, which the applicant cites to for an example of remediation costs which were incurred prior to the filing of a

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Board variance application involved \$340,000 in remediation costs, which is nearly ten times what the applicant discusses; and

WHEREAS, the Board notes that the total development cost is \$4 million and that \$56,000 represents one percent of the total development costs; and

WHEREAS, the applicant's discussion about the prohibitive costs of remediating the site if the auto repair building remained are misplaced because the applicant did not maintain the prior building; and

WHEREAS, accordingly, the Board does not find any of the purported unique conditions to rise to the level of unnecessary hardship or practical difficulties; and

WHEREAS, more importantly, the Board finds that the applicant fails to assert, let alone establish that any of the alleged unique physical conditions have any nexus to the relief requested; and

WHEREAS, additionally, the applicant did not apply to the Board for a variance on the basis of any of these factors when it initiated development in 2003; and

WHEREAS, logically, if any of these factors truly inhibited development to the point where unnecessary hardship or practical difficulties resulted, then the project would not have been initiated without relief from this Board; and

WHEREAS, the Board concludes that the need for the side yard waiver really results from the erroneous assumption that the zoning lot was in a PBA, and that five residential buildings could therefore be developed without a community facility component as of right using the 1.65 FAR that the PBA regulations permit; and

WHEREAS, for the above reasons, the Board concludes that the applicant has not shown that there are unique physical conditions present at the site that lead to unnecessary hardship or practical difficulties in complying with the applicable side yard requirement; and

WHEREAS, the applicant's secondary argument is that a variance is justified based upon good faith reliance on DOB's permitting action; and

WHEREAS, specifically, the applicant claims that at the time development commenced, there was no way for the filing architect to know that the zoning district had changed on the north side of the block such that PBA regulations did not apply to the site; and

WHEREAS, the applicant claims that the Department of City Planning (DCP) did not provide proper notice of the zoning change to the professional filing community before the application for the permit was made; and

WHEREAS, as noted above, the zoning change was adopted by the City Planning Commission on January 24, 2001, which is approximately one and a half years before the permit application was filed with DOB; and

WHEREAS, the applicant claims that the zoning map reflecting such change (zoning map 9a) was not made available to the public in any form until February of 2003; and

WHEREAS, the applicant argues that the lack of knowledge of the zoning change was not its fault; and

WHEREAS, the applicant also alleges that had DOB performed an audit of the permit application and plan approval, it might have been alerted to the error prior the commencement of construction instead of in 2004; and

WHEREAS, after careful consideration of all submitted testimony and evidence in support of these contentions, the Board does not credit any aspect of applicant's good faith reliance argument; and

WHEREAS, the Board notes at the outset that an architect should be charged with constructive notice of both the zoning district in which the development site is located as well as adjacent zoning districts if a change in said district would have a substantive effect on the development proposal, especially where an architect uses the Professional Certification program, in which he or she is able to obtain a permit without a full DOB examination; and

WHEREAS, moreover, the Board finds that information regarding the zoning change on the subject block was readily available to the filing architect prior to issuance of the plans approvals and the permits; and

WHEREAS, for example, the Board notes that the architect could have contacted DCP directly to confirm the zoning of the block; and

WHEREAS, additionally, contrary to the representations of the applicant during the course of the 2004 application process, a revised zoning map 9a that reflected the changed zoning on the subject block was available on the DCP web-site as early as February 1, 2001, well before the permits were obtained; and

WHEREAS, during the review of the prior application, the Board's staff confirmed this fact through communication with DCP; the applicant was made aware of this communication and its substance; and

WHEREAS, the Board concludes that any claim of good faith reliance upon DOB's permitting action is negated by the lack of due diligence in consulting DCP directly or its web-site, where information about the zoning change that would have prevented the erroneous DOB filing could easily have been obtained; and

WHEREAS, while the applicant has submitted correspondence between its office and DCP regarding the web-site posting of revised zoning maps aside from zoning map 9a, such correspondence has no applicability to the instant matter; thus, the Board finds such correspondence irrelevant to its determination herein; and

WHEREAS, the Board also rejects the argument that DOB had any obligation to review the plan approvals and permit issuance prior to the commencement of construction; and

WHEREAS, DOB has issued numerous Policy and Procedure Notices (PPNs) regarding the Professional Certification program, all of which state that random audits of a certain percentage of applications will be made within a specified time period, but also that DOB reserves its right to audit any application at any time; and

WHEREAS, none of the PPNs issued by DOB require a DOB audit of all Professionally Certified jobs; and

WHEREAS, the Board concludes that there was no

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good faith reliance and no uniqueness leading to unnecessary hardship or practical difficulties; and

WHEREAS, instead, the need for the side yard waiver arises only because the development as a whole and the subject building in particular was constructed contrary to zoning; and

WHEREAS, thus, the Board concludes that applicant's argument that DOB acted contrary to its own policy is erroneous; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, as to the (b) finding, the applicant's feasibility study includes six schemes: as-of-right residential; the proposed residential/community facility; three alternative residential/community facility configurations; and one exclusive community facility; and

WHEREAS, the applicant represents that none of the alternatives results in a reasonable rate of return except the proposal; and

WHEREAS, the Board finds that the applicant's analysis and conclusions are flawed; and

WHEREAS, specifically, the Board notes that the differences between the rates of return for the alternatives is negligible, reflecting a difference of just fractions of a percentage point; and

WHEREAS, the Board questions certain of the applicant's assumptions, including the 43 percent operating expense rate, because 20 to 25 percent is the industry standard, particularly for this kind of development; and

WHEREAS, accordingly, in its review of the feasibility study, the Board has determined that a single minor change, including a reduction in the operating expense rate, results in a more reasonable rate of return; and

WHEREAS, alternately, the Board notes that if the special expense amount associated with the purported remediation were eliminated from the equation, there would not be any significant reduction in the rate of return; and

WHEREAS, the Board finds that the applicant has not shown that the as of right scenarios are not viable or that the remediation costs constrain the development; and

WHEREAS, finally, the Board notes that the alternatives with community facility use fail to reflect a change in the site value, which is based on residential use and thus exceeds that which would be paid for the lower return community facility space; and

WHEREAS, the Board notes that the site is valued at higher income generating residential space and, thus a comparison to any of the community facility scenarios is flawed; and

WHEREAS, accordingly, for the reasons stated above and due to the negligible differences between the development alternatives, the Board rejects the applicant's assertion that none of the alternatives are viable and that the proposal is the only scenario that results in a reasonable rate of return; and

WHEREAS, as stated above, the need to re-design the building now is not a hardship and the side yard waiver

arises only because the development was constructed contrary to zoning; and

WHEREAS, hardship that occurs only because of the actions of the property owner is best characterized as self-created, in the absence of any countervailing factors; and

WHEREAS, accordingly, the Board finds that the need for the side yard waiver is a self-created hardship; and

WHEREAS, thus, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(d), which requires that the practical difficulties or unnecessary hardship claimed as the basis for a variance have not been created by the property owner; and

WHEREAS, the applicant cites to case law, claiming it establishes precedent for the following issues and supports its case for a variance: (1) the quantum of proof required for variance applications and the nature of the variance sought, (2) the public policy goal of eliminating a non-conforming use, (3) the self-created hardship, and (4) the principle of good faith reliance; and

WHEREAS, as to the quantum of proof, the applicant cites to Human Development Services v. Zoning Board of Appeals of Port Chester, 110 A.D.2d 135 (1985) (quoting Matter of National Merritt v. Weist, 41 N.Y.2d 438 (1977) for the principle that the amount of proof necessary to satisfy variance findings varies with the degree of the requested waivers; and

WHEREAS, the Board notes that both cases draw some distinction between a use variance and an area variance and deem that the quantum of proof may be lower in area variances as area variances do not involve the introduction of a non-conforming use to a site; and

WHEREAS, however, the Board notes that neither case states that either a use or area variance could be granted absent evidence to support each of the variance findings; and

WHEREAS, if the Board has determined that the applicant fails to make any one of the five required variance findings, pursuant to ZR § 72-21, then the applicant would not even achieve a minimal quantum of proof, even if a lesser standard were appropriate given that the proposal reflects a yard waiver, rather than a use change; and

WHEREAS, the Board notes that the applicant's potential loss associated with a demolition of the illegal construction if the relief is not granted is not to be weighed against the magnitude of the relief sought; there is no exemption from making the five required findings; and

WHEREAS, the applicant cites to additional New York State cases, which address the differences between use and area variances; none of which suggest that the Board may grant a variance involving a side yard waiver without making each of the five required findings here; and

WHEREAS, the Board notes that the applicant dedicates a considerable portion of the argument for the (a) finding to a discussion about the prior non-conforming use at the site and cites prior Board cases regarding use variances, all of which are irrelevant; and

WHEREAS, the applicant cites to Toys "R" Us v. Silva, 89 N.Y.2d 411 (1996), for the principle that zoning

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supports the elimination of non-conforming uses; and
WHEREAS, the Board reiterates that the Subject Building and Four Buildings are occupied by and are proposed to be occupied by community facility and residential uses, which are conforming uses in the subject zoning district and any discussion of eliminating a non-conforming use is misplaced; and

WHEREAS, as to the self creation of the hardship, the applicant cites to Douglaston Civic Association v. Klein, 67 A.D.2d 54, 61 (2d Dep't. 1979), aff'd, 51 N.Y.2d 963, 435 N.Y.S.2d 705 (1980) for a purported distinction between discovering a hardship in the course of developing a site and anticipating a hardship prior to purchasing a site; and

WHEREAS, the Board distinguishes Douglaston from the subject case because it involves the purchase of a site with a marsh condition that physically constrained development; the applicant fails to draw any meaningful connection between the hardship in Douglaston and the subject case of failing to perform due diligence as to zoning; and

WHEREAS, the Board notes that any financial hardship that the applicant claims would be incurred if demolition of the Subject building were required is a direct result of the applicant failing to perform due diligence to ascertain the zoning prior to construction; it has nothing to do with any inherent condition of the site, as in Douglaston; and

WHEREAS, as to good faith reliance, the applicant interprets the case law too broadly, including Jayne Estates v. Raynor, 22 N.Y.2d 417, 239 N.Y.S.2d 75 (1968) and Ellentuck, et al. v. Joseph B. Klein, et al., 51 A.D.2d 964, 380 N.Y.S. 2d 327 (2d Dep't 1976), with regard to when a hardship incurred by the reliance on a permit which is later invalidated is relevant to a variance finding; and

WHEREAS, the Board clarifies that the courts do not extend the good faith reliance principle to all property owners who build pursuant to a permit, which is subsequently invalidated; the courts have limited the applicability of good faith reliance to situations where property owners performed work pursuant to a series of governmental review and approvals, which were later reversed; and

WHEREAS, the Board readily distinguishes the subject case which involves building plans approved through the Professional Certification program, which means that DOB did not audit or review the plans prior to the applicant's construction; and

WHEREAS, the Board notes, as described above, that any participant in the Professional Certification program is open to have plans audited at any time; and

WHEREAS, finally, it is clear that the applicant simply did not perform due diligence as to the zoning map of the subject site, which had changed two years prior to the commencement of construction; and

WHEREAS, the applicant's reliance on DOB's approval at 21-34 Broadway is misplaced in that it involved the vertical enlargement of pre-existing lot line walls for a residential enlargement, which is not factually similar to the

subject case which involves new construction of a mixed-use residential/community facility building; and

WHEREAS, additional case law, including Pantelidis v. BSA, 10 Misc.3d 1077(A) at 8 (N.Y. Sup. Ct. 2005) (citing Matter of Hoffman v. Harris, 17 N.Y.2d 138, 144) aff'd 43 A.D.3d 314, 841 N.Y.S.2d 41 (1st Dep't 2007), aff'd, 10 N.Y.3d 846, 859 N.Y.S.2d 597 (2008), requires evidence of reliance, which the applicant in the subject case cannot demonstrate; and

WHEREAS, simply, the Board notes, the applicant participated in the Professional Certification program, then DOB audited the plans, identified zoning non-compliance, and issued a Stop Work Order; and

WHEREAS, the Board is able to distinguish all of the cited case law and, thus, finds the applicant's reliance on it unavailing; and

WHEREAS, since the application fails to meet the findings set forth at ZR §§ 72-21 (a), (b), and (d), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR §§ 72-21(a), (b), and (d), which all address the threshold issue of whether a unique hardship afflicts the site, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, September 29, 2006, acting on Department of Buildings Application No. 401515017, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, July 21, 2009.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR §§ 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Eric Palatnik, Stuart Klein and Martin Cohen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 5, 2008, acting on Department of Buildings Application No. 310174637, reads in pertinent part:

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“Proposed plans are contrary to ZR 24-34 in that the proposed front yards are less than the minimum required front yards of 15 feet.

Proposed plans are contrary to 24-35 in that the proposed side yards are less than the minimum required side yards;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a one-story mikvah (Use Group 4), which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35; and

WHEREAS, a public hearing was held on this application on February 10, 2009, after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 28, 2009, and June 9, 2009, and then to decision on July 21, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, a number of community residents testified in support of the application; and

WHEREAS, the adjacent neighbor at 1813 East 28th Street, represented by counsel, provided written and oral testimony in opposition to this application, requesting that the applicant redesign the proposed building to provide a complying side yard along its southern lot line; and

WHEREAS, other community members, represented by counsel, provided written and oral testimony in opposition to this application; and

WHEREAS, a number of community members individually testified in opposition to the application; and

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

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the applicant did not establish a programmatic need for the number of patrons that will use the facility; (2) the programmatic needs do not justify locating the ritual baths solely on the first floor; (3) the programmatic needs do not justifying the number of preparation rooms in the proposal; (4) the proposal could be redesigned to provide complying side yards; (5) the applicant did not provide a parking analysis; (6) the applicant did not establish that the required mechanicals would incorporate proper sound attenuation measures; and (7) the applicant failed to provide certain information requested by the Opposition and/or the Board; and

WHEREAS, this application is being brought on behalf of the Sephardic Mikvah Israel, a non-profit religious entity; and

WHEREAS, the subject premises is located on the southeast corner of the intersection at Avenue R and East 28th Street, within an R3-2 zoning district; and

WHEREAS, the site has a rectangular shape with 38 feet

of frontage on Avenue R, a depth of 100 feet, and a total lot area of 3,800 sq. ft.; and

WHEREAS, the subject site is currently occupied by a vacant single-family home, which is to be demolished; and

WHEREAS, the applicant proposes to construct a one-story and cellar mikvah on the site (hereinafter, the “Mikvah”) with a floor area of approximately 2,448 sq. ft. (0.64 FAR) (1.0 FAR is the maximum permitted); two side yards of 4’-0” each (two side yards of 8’-0” and 8’-7 1/5”, respectively, are the minimum required); a front yard of 11’-0” along the northern lot line and a second front yard with a depth of 5’-0” along the western lot line (two front yards of 15’-0” each are the minimum required); and

WHEREAS, the applicant initially proposed a building with a front yard of 11’-6” along the northern lot line, a front yard of 5’-0” along the western lot line, and no side yards; and

WHEREAS, in response to concerns raised by the Opposition and at the request of the Board, the applicant revised its plans to provide a front yard of 11’-0” along the northern lot line, a front yard of 5’-0” along the western lot line, and two side yards of 4’-0” along the eastern and southern lot lines; and

WHEREAS, the proposal provides for the following uses: (1) two ritual pools, 11 preparation rooms, a dressing room, reception area, waiting room, powder room, linen/staff room, and foyer on the first floor; and (2) a laundry room, refuse room, mechanical room, bookkeeping and secretarial area, and storage rooms in the cellar; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mikvah: (1) a centralized location to relieve the overcrowding of existing mikvahs in the community and to better serve the surrounding area; (2) a sufficient number of preparation rooms and ritual pools to accommodate the approximately 22 women anticipated to patronize the Mikvah on a daily basis; (3) to locate the ritual pools on the ground floor; and (4) privacy for the women who use the Mikvah; and

WHEREAS, the applicant states that there are currently only two Sephardic mikvahs, located at 810 Avenue S and 583 Kings Highway, servicing more than twenty Sephardic synagogues in the surrounding area; and

WHEREAS, the applicant further states that it operates the mikvah located at 810 Avenue S (the “Avenue S Mikvah”), which is operating at its maximum capacity with more than 100 women attending each night; and

WHEREAS, the applicant states that the Avenue S Mikvah, which is located more than one mile from the proposed Mikvah, does not have sufficient capacity for the women in the community who observe the mikvah ritual; and

WHEREAS, the applicant represents that the addition of the proposed Mikvah is therefore necessary to relieve the overcrowding at the Avenue S Mikvah; and

WHEREAS, in support of its statement that a mikvah is necessary at the proposed location, the applicant submitted a color-coded map reflecting that the Mikvah will be located to the east of the two existing Sephardic mikvahs, allowing it to serve six synagogues that are currently located more than a half mile from either of the existing mikvahs; and

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WHEREAS, the applicant represents that, due to the religious requirements of ritual purity, a woman must travel alone to the mikvah after sundown on a specific day each month, and is not permitted to delay; and

WHEREAS, in addition, the applicant states that Jewish law prohibits congregants from driving on the Sabbath; and

WHEREAS, the applicant represents that a mikvah at the subject site will reduce the inconvenience for many women who, due to religious requirements and the distance of their homes from the existing mikvahs, must walk more than a mile at night and by themselves every Sabbath; and

WHEREAS, thus, the applicant represents that a mikvah is necessary at the proposed location to relieve the overcrowded conditions of the existing mikvahs and to better serve areas of the community located furthest from the existing mikvahs in the area; and

WHEREAS, the applicant states that the requested front and side yard waivers will allow for a building footprint that is large enough to accommodate all of the required Mikvah services; and

WHEREAS, the applicant represents that the provision of complying side yards would reduce the interior of the building to such an extent that two bathrooms and the second mikvah pool would need to be eliminated, and as a result the facility would not be large enough to accommodate the number of women anticipated to use the Mikvah; and

WHEREAS, the applicant further represents that the requested front and side yard waivers are necessary to provide an adequate number of preparation rooms and ritual baths for the anticipated number of Mikvah patrons; and

WHEREAS, in support of this statement, the applicant submitted a chart reflecting that out of the six congregations that the proposed Mikvah will service, there are approximately 650 women who utilize a mikvah; and

WHEREAS, the applicant anticipates that the Mikvah will serve approximately 22 of those 650 women on a daily basis; and

WHEREAS, the applicant submitted letters from the Madison Torah Center and Congregation Shaare Shalom, two of the six congregation that the Mikvah will service, stating their support for the proposal given the community's need for such a facility; and

WHEREAS, the applicant represents that the appropriate ratio of preparation rooms to mikvah pools is six preparation rooms per mikvah pool; and

WHEREAS, the applicant further represents that the average amount of time for a woman to complete the ritual, including preparation and getting ready to leave, is approximately 70 minutes; and

WHEREAS, the Opposition submitted mathematical calculations asserting that, based on the evidence provided by the applicant, six to eight preparation rooms are sufficient for the proposed Mikvah, as opposed to the 11 preparation rooms proposed by the applicant; and

WHEREAS, in response, the applicant states that immersion in the ritual bath must happen after sundown, and the calculations submitted by the Opposition do not account for the fact that the hours of operation of the Mikvah therefore

vary based on the time of year, thereby limiting the potential time patrons can visit the Mikvah; and

WHEREAS, the applicant further states that the proposed Mikvah actually provides less than the ideal number of preparation rooms, as a result of the space constraints of the subject site; and

WHEREAS, the applicant concludes and, based on the documented programmatic needs, the Board agrees that, due to the condensed number of hours permitted for immersion and the number of women in the community that are required to go to the mikvah, 11 preparation rooms and two ritual baths are necessary to enable the Mikvah to handle the volume of women that are anticipated to use the proposed facility; and

WHEREAS, the applicant represents that the requested waivers are also necessary to accommodate two ritual baths at ground level; and

WHEREAS, the applicant states that the proposed Mikvah will cater to a segment of the community whose religious customs dictate that the Mikvah be located on the ground level; and

WHEREAS, the Opposition contends that there is nothing in Jewish law that prohibits the applicant from locating one or both ritual pools in the cellar or on a second floor; and

WHEREAS, in support of its argument, the Opposition submitted a letter from a rabbi from Congregation Kollel Bnei Hayeshivos, stating that Jewish law allows mikvah pools to be placed either below ground, at ground level, or above ground such as on the second floor; and

WHEREAS, in response, the applicant submitted a letter from the National Supervisor of Ritual Baths in Israel, stating that a mikvah should be built on the first floor and that it is forbidden to construct a mikvah below ground level where pipes may crack or leak in the winter, posing significant problems under Jewish law; and

WHEREAS, the applicant acknowledges that some mikvahs are in fact located in cellars, however the applicant represents that this is because they are used for men and are not subject to the same restrictions as women's mikvahs; and

WHEREAS, the applicant also submitted a letter from a professional engineer familiar with mikvah requirements, stating that any leakage of water from a mikvah renders the water "flowing water," invalidating the mikvah such that it cannot be used to satisfy the religious requirement; and

WHEREAS, the applicant states that locating the ritual baths at ground level allows for quality control to ensure that the baths do not leak; and

WHEREAS, in addition, the applicant represents that locating the Mikvah entirely in the cellar would be financially infeasible, as it would result in significant costs associated with additional excavation and shoring, larger holding tanks, protecting the cellar from leaks, an elevator, a more expensive ventilation system, and a larger boiler intake; and

WHEREAS, the applicant further represents that building the Mikvah on both the first floor and the cellar level would also be financially infeasible as it would require many duplicate costs and would also require additional staff; and

WHEREAS, thus, the applicant states that as a result of the need for the ritual baths to be located at ground level, the

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yard waivers are necessary to meet the Mikvah's programmatic needs; and

WHEREAS, the applicant further represents that the requested waivers are necessary to ensure the privacy of the women who use the Mikvah; and

WHEREAS, the applicant states that modesty and privacy are fundamental aspects of the deeply personal mikvah ritual; and

WHEREAS, the applicant represents that a complying building will not provide sufficient corridors or the appropriate number of preparation rooms to ensure the privacy of its patrons; and

WHEREAS, the Board acknowledges that the Mikvah, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

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

WHEREAS, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under established precedents of the courts, "[r]eligious use is conduct with a religious purpose, the determination of which focuses on the proposed use itself, not the religious nature of the organization" (McGann v. Incorporated Village of Old Westbury, 293 A.D.2d 581 (2d Dep't 2002)), and includes uses ancillary to the function of the house of worship (See Community Synagogue v. Bates, 1 N.Y.2d 445 (1956)); and

WHEREAS, the Board recognizes the role of a mikvah in the religious Jewish community and its significance to Jewish life; accordingly, the Board finds that the Mikvah qualifies as a religious use and is therefore entitled to significant deference under the law of the State of New York as to zoning; and

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

WHEREAS, the applicant need not address ZR § 72-21(b) since the Mikvah is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; 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 notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further notes that front and

side yard waivers are the only waivers requested and that the FAR and height of the proposed building are below what is permitted in the subject R3-2 zoning district; and

WHEREAS, the Board notes that an as-of-right residential building could be significantly larger, and while it would provide complying side yards, it could reach a height of 35'-0"; and

WHEREAS, by contrast, the proposed Mikvah, while having side yards of four feet, is a one-story structure with a maximum wall height of 13'-8" and a pitched roof with a total height of 26'-1", which is 8'-11" less than the maximum permitted height for a residential building; and

WHEREAS, thus, the Board notes that the lower building height and bulk of the proposed Mikvah as compared to an as-of-right building reflects conditions that are compatible with nearby homes; and

WHEREAS, the Opposition asserts that if the proposed building were smaller it would be more compatible with the surrounding neighborhood, and that the proposed building can be further redesigned to provide complying side yards while still satisfying the stated programmatic needs; and

WHEREAS, in support of this claim, the Opposition submitted alternative plans that modify certain design elements to achieve complying side yards, such as the location of the linen/staff room, the orientation of certain preparation rooms, and the width of the corridor; and

WHEREAS, in response, the applicant states that the alternative plans submitted by the Opposition fail to comply with certain Building Code requirements, and do not provide enough space for the number of people who are anticipated to use the Mikvah; and

WHEREAS, the Board notes that the applicant has already modified its plans to provide additional side yard relief on two occasions, resulting in the current proposal with 4'-0" side yards along the eastern and southern lot lines, and that the applicant represents that providing further side yard relief would prevent it from meeting its programmatic needs; and

WHEREAS, the Opposition asserts that the applicant must provide a parking analysis to establish that there will not be any parking impacts as a result of the proposed use; and

WHEREAS, in response, the applicant states that a waiver from the parking requirements of the Zoning Resolution was not requested with this application, and ZR §§ 25-33, 25-18 and 25-31 do not require parking due to the size of the community facility; and

WHEREAS, the Opposition contends that the applicant should document its assertions that there will not be any parking impacts as a result of the proposed use, because the Environmental Assessment Statement ("EAS") form requests parking regulations and the EAS Analysis has an entire section devoted to "Traffic and Parking;" and

WHEREAS, the applicant asserts, and the Board agrees, that the information related to parking is requested in the EAS to help determine areas of potential impact where further analysis will be required, and the "Traffic and Parking" section of the EAS Analysis specifically states that because the proposed development does not exceed the threshold amount of 15,000 sq. ft. of additional space, no further analysis is

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required; and

WHEREAS, the Board notes that, given the proximity of the proposed Mikvah to the homes of many of its anticipated users, in conjunction with the fact that Jewish law prohibits driving on the Sabbath, many Mikvah visitors are likely to walk to the proposed facility, thereby reducing any potential traffic impacts; and

WHEREAS, the Opposition asserts that the applicant failed to provide evidence that sufficient sound attenuation measures will be provided for the proposed mechanical equipment to ensure that the Mikvah will not have a detrimental impact on the surrounding community; and

WHEREAS, in response, the applicant states that in order to buffer noise, the air condenser units will be split and the blowers will be located in the roof cavity instead of directly on the roof; the boilers and additional mechanicals will be located in the cellar; and all venting will occur through the roof; and

WHEREAS, in support of this statement, the applicant submitted plans reflecting the location of the mechanical equipment; and

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

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

WHEREAS, as to the minimum variance, as noted above, during the hearing process the applicant revised the proposal multiple times to provide side yards along the southern and eastern lot lines, and states that further side yard relief would prevent it from meeting its programmatic needs; and

WHEREAS, the Opposition contends that the proposal is not the minimum variance because the plans can be further redesigned to provide additional side yard relief; and

WHEREAS, the applicant represents that, in addition to the ritual pools and preparation rooms, a typical mikvah also includes one or more bridal rooms, to be used only by women on the day before marriage; and

WHEREAS, the applicant states that in order to minimize the requested zoning waiver, the proposed Mikvah will not provide a bridal room, and instead all brides will be referred to the Avenue S Mikvah; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mikvah the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Opposition asserts that the applicant has failed to provide the following information requested by the Board or the Opposition, and as such lacks sufficient evidence to establish that it has met the findings for the requested variance: a survey, the interior dimensions on all the plans, the

operating protocols of the Avenue S Mikvah, a list of potential visitors to the Mikvah or their addresses, a list of affiliated congregations, the means by which visits to the Mikvah will be scheduled, or a justification for the storage rooms at the cellar level; and

WHEREAS, as noted above, the Board finds the evidence submitted by the applicant to be sufficient to establish that the applicant has satisfied the findings of the requested variance; and

WHEREAS, additionally, the Board notes that the Opposition's requests are not reflective of the evidence required for a variance; 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.09BSA-022K, dated September 3, 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, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, the construction of a mikvah (Use Group 4), which does not comply with the zoning requirements for front yards and side yards for community facilities, contrary to ZR §§ 24-34 and 24-35, *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 17, 2009" – One (1) sheet; "Received June 17, 2009" – Five (5) sheets and "Received May 19, 2009" – Six (6) sheets and *on further condition*:

THAT the building parameters shall be: approximately 2,448 sq. ft. of floor area; an FAR of 0.64; a front yard of 11'-

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0' along the northern lot line; a front yard of 5'-0" along the western lot line; a side yard of 4'-0" along the southern lot line; and a side yard of 4'-0" along the eastern lot line;

THAT the use shall be limited to a mikvah (Use Group 4);

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

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

THAT construction shall proceed 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, July 21, 2009.

203-07-BZ

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

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for decision, hearing closed.

173-08-BZ

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

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk 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: Adam 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 August 25, 2009, at 10 A.M., for decision, hearing closed

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 August 11, 2009, at 10 A.M., for decision, hearing closed

288-08-BZ

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.

SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Costanzo's Martial Arts Studio) on the second floor of a two-story commercial building. The proposal is contrary to ZR §42-10. M1-1 district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Jeffrey Geary.

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 August

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18, 2009, at 10 A.M., for decision, hearing closed

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance pursuant to §72-21 to allow for the construction of a 12 story commercial building contrary to bulk regulations §§43-12, 43-43, 43-26 and use regulations §42-12. M1-5 District.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for adjourned hearing.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to bulk regulations ZR §24-34, §24-35, §24-11. R5 District.

PREMISES AFFECTED – 5611 21st Avenue, east side 95’-8” north of intersection of 21st Avenue and 57th Street, Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Yosef S. Gottdiener.

For Opposition: Albano, Stella.

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 August 18, 2009, at 10 A.M., for decision, hearing closed

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building. The proposal is contrary to ZR Sections 23-141 (Floor Area, FAR & Open Space Ratio), 23-22 (Number of Dwelling Units), 23-45 (Front Yard), 23-462 (Side Yard), and 23-631 (Wall Height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein, Allan M. Martin, Rabbi Eli

Cohen and Isriel Rappoport.

For Opposition: Gloria E. Goodwin and Joseph Scott.

ACTION OF THE BOARD – Laid over to September 15, 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; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance pursuant to 72-21 to permit the enlargement of a synagogue contrary to side yard regulations ZR 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, Charles Steinberg and Ezra Holezar.

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 August 25, 2009, at 10 A.M., for decision, hearing closed

164-09-BZ

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

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for the enlargement of an existing Two-Family home. This application seeks to vary floor area, lot coverage and open space (ZR 23-141) and less than the required rear yard (ZR 23-47) in an 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 August 25, 2009, at 1:30 P.M., for continued hearing.

171-09-BZ

APPLICANT – James Chin & Associates, LLC, for Chong Duk Chung, owner.

SUBJECT – Application May 15, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on a portion of the first floor in an existing 42-story mixed-use building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 325 Fifth Avenue, east side of 5th Avenue, 64.3’ from the corner of East 32nd and 5th Avenue,

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Block 862, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mindy Chin.

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 August
18, 2009, at 10 A.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. This application seeks to vary open space, lot
coverage and floor area (23-141); side yards (23-461) and
rear yard (23-47) in an 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.

ACTION OF THE BOARD – Laid over to August
11, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.