
BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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

Volume 94, No. 30

August 6, 2009

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Roy Starrin, *Deputy Director*

Becca Kelly, *Counsel*

OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006

HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006

BSA WEBPAGE @ <http://www.nyc.gov/html/bsa/home.html>

TELEPHONE - (212) 788-8500

FAX - (212) 788-8769

CONTENTS

DOCKET491

CALENDAR of August 18, 2009

Morning492

Afternoon493

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, July 28, 2009**

Morning Calendar494

Affecting Calendar Numbers:

200-00-BZ	107-24 37 th Avenue, Queens
26-02-BZ	1680 Richmond Avenue, Staten Island
322-05-BZ	69-69 Main Street, Queens
441-31-BZ	7702 Flatlands Avenue, Brooklyn
271-81-BZ	110/112 West 56 th Street, Manhattan
826-86-BZ thru 828-86-BZ	269-10, 270-10, 271-10 Grand Central Parkway, Queens
55-97-BZ	76-36 164 th Street, Queens
246-01-BZ	35-11 Prince Street, Queens
128-04-BZ	162-168 East 68 th Street, Manhattan
197-05-BZ	813/815 Broadway, Manhattan
23-06-BZ	150-62 78 th Road, Queens
22-09-A	663 Highland Place, Queens
55-09-A	1 Kildare Walk, Queens
165-09-A	150 Hendricks Avenue, Staten Island
172-09-A	10 Gotham Walk, Queens
191-09-A	1291 Carroll Street, Brooklyn
83-08-A	3218 Emmons Avenue, Brooklyn

Afternoon Calendar505

Affecting Calendar Numbers:

18-09-BZ	250 West 54 th Street, Manhattan
30-09-BZ	136-33 37 th Avenue, Queens
169-08-BZ	46 Laight Street, Manhattan
241-08-BZ	546 Midland Avenue, Staten Island
260-08-BZ	148 Oxford Street, Brooklyn
9-09-BZ	63-03 Fresh Pond Road, Queens
23-09-BZ	114 Amherst Street, Brooklyn
53-09-BZ	540 Schenck Avenue, Brooklyn
161-09-BZ	580 Carroll Street, Brooklyn
176-09-BZ	220-236 West 28 th Street, Manhattan

DOCKETS

New Case Filed Up to July 28, 2009

232-09-A

1775 Flatbush Avenue, Brooklyn Avenue and East 36th Street., Block 7618, Lot(s) 39,
Borough of **Brooklyn, Community Board: 18**. Fire Code Appeal

233-09-BZY

91-12 175th Street, Situated on the west side of 175th Street, approximately 120 feet south of
91st Avenue., Block 9809, Lot(s) (tent 70), Borough of **Queens, Community Board: 12**.
Extension of Time (11-332) to complete construction under the prior zoning district.

234-09-BZ

25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of
28th Avenue., Block 715, Lot(s) 16, Borough of **Queens, Community Board: 1**. Variance
to allow a residential building, contrary to use regulations.

235-09-BZ

162-25 112th Road, Guy Brewer Boulevard and 112th Road., Block 12183, Lot(s) 35 (tent),
Borough of **Queens, Community Board: 12**. Variance to allow proposed community
facility use, contrary to bulk regulations.

**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 18, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 18, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

461-37-BZ

APPLICANT – New York City Board of Standards and Appeals.

Peter Hirshman.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term/Waiver-To re-establish the existing parking lot for a term of ten (10) years.

PREMISES AFFECTED – 22 B East 39 Street, East 39 Street south side, 98’ east of Madison Avenue, Block 868, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #6M

12-94-BZ

APPLICANT – New York City Board of Standards and Appeals

S. Kilgor for Mario KoKKonis

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term/Waiver (32-31 & 73-36) to reopen and extend the term for a Physical Cultural Establishment.

PREMISES AFFECTED – 245-13 Jamaica Avenue, north side of Jamaica Avenue and 245th Street, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD # 13Q

5-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

Sheldon Lobel, P.C.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Time/Waiver of Term & Time (11-411) reopen, waive and extend the time of 10 years.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334’ west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

384-03-BZ

APPLICANT – New York City Board of Standards and Appeals.

Anthony Somefun.

SUBJECT – Application for dismissal for lack of prosecution – To be withdrawn and filed as a special permit for parking for parking reduction pursuant to (§73-44) for the second and third floors of a commercial space.

PREMISES AFFECTED – 804-816 East 138th Street, south side of East 138th Street, 155.82’ east of corner formed by East 138th Street and Willow Avenue, Block 2589, Lot 16, Borough of Bronx.

COMMUNITY BOARD #1BX

262-07-BZ

APPLICANT – New York City Board of Standards and Appeals.

Peter Hirshman

SUBJECT – Application for dismissal for lack of prosecution – Special Permit (§11-411) for the reinstatement of previously approved variance for parking, contrary to use regulations

PREMISES AFFECTED – 23 East 38th Street, south east corner of East 38th Street and Madison Avenue, Block 869, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

318-08-A

APPLICANT – Joseph A. Sherry, for Ralph Richardson, owner.

SUBJECT – Application December 31, 2008 – Proposed enlargement of a commercial use located within the bed of a mapped street contrary to General City Law Section 35. C8-1 zoning district.

PREMISES AFFECTED – 1009 Beach 21st Street, north west corner of Cornaga Avenue, Block 15705, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

AUGUST 18, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 18, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the renovation and enlargement of a non-conforming one-family dwelling. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

249-08-BZ

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

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family dwelling which seeks to vary the required floor area and open space (23-141); does not provide the required front yard (23-45), rear yard (23-47), side yard (23-46) and the required off street parking (25-622) in an R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to permit the use of the existing structure for a synagogue on the first floor and the enlargement of the existing detached garage for an accessory mikvah. The variance requests are for lot coverage, front yards, side yards, and parking. R3X district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 28, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application June 1, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), in a C1-4(R6B) zoning district, which expired on February 19, 2009.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on February 19, 2009; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

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

WHEREAS, the site is located at the southwest corner of 37th Avenue and 108th Street, within a C1-4 (R6B) zoning district; and

WHEREAS, on July 17, 2001, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the legalization of an existing PCE on the first floor and a portion of the second floor of an existing two-story mixed-use manufacturing/office building within a C1-4 (R6B) zoning district for a term of five years to expire July 17, 2006; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor;

and

WHEREAS, on August 21, 2007, under the subject calendar number, the Board reopened the variance to extend the term of the variance for an additional five years, to expire on July 17, 2011; and

WHEREAS, on August 19, 2008, the Board granted an extension of time to obtain a certificate of occupancy, to expire on February 19, 2009; and

WHEREAS, by letter dated January 12, 2009, the Board clarified that the physical culture establishment approved by the Board is located on the second floor only; and

WHEREAS, the applicant states that the property owner has completed general construction at the site; and

WHEREAS, the applicant further states that the planting of street trees as per the BSA-approved plans is the only work remaining at the site; and

WHEREAS, however, the applicant represents that administrative delays at the Department of Buildings (“DOB”) prevented the owner from obtaining the new certificate of occupancy for the PCE within the prescribed time frame; and

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

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy 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 July 17, 2001, 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 28, 2010; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 28, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402567254)

Adopted by the Board of Standards and Appeals, July 28, 2009.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application June 8, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in a C1-2(R3X) zoning district,

MINUTES

which expires on July 13, 2009.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy Bachan.

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 Montanez5

Negative:.....0

THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

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

WHEREAS, the site is located on the northwest corner of the intersection at Richmond Avenue and Victory Boulevard, within a C1-2 (R3X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1970 when, under BSA Cal. No. 141-69-BZ, the Board granted a variance authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, on December 10, 2002, under the subject calendar number, the variance was reinstated to permit the legalization of the existing automotive service station for a term of ten years from the date of the grant, to expire December 10, 2012; a condition of the grant was that a new certificate of occupancy be obtained by December 10, 2006; and

WHEREAS, most recently, on January 13, 2009, the Board granted an extension of time to obtain a certificate of occupancy and amended the grant to permit the conversion of a portion of the service building to an accessory convenience store, and to permit other minor site modifications; and

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

WHEREAS, the applicant represents that delays resulting from the need to legalize the accessory convenience store at the Department of Buildings (“DOB”) prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

WHEREAS, based upon its review of the record, the Board finds that the requested six-month extension of time

to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated December 10, 2002, 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 28, 2010; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 28, 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. 500459764)

Adopted by the Board of Standards and Appeals July 28, 2009.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for an enlargement of a single family home and the change in use from Residential to Community Use Facility (Queens Jewish community Council), located in an R4B zoning district, which will expire on March 7, 2010.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is a reopening and an extension of time to complete construction of an enlargement of an existing single-family home and its change in use from

MINUTES

residential to community facility use, which expires on March 7, 2010; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Main Street and 70th Avenue; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 2006 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing two-story plus cellar single-family home and the change in use from residential to community facility; and

WHEREAS, substantial construction is to be completed by March 7, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed since the date of the Board's grant, and that the owner expects to commence construction within the 2010 calendar year; and

WHEREAS, thus, the applicant requests an extension of time to complete construction; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 7, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years from the expiration of the previous grant, to expire on March 7, 2014; *on condition*:

THAT substantial construction shall be completed by March 7, 2014;

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

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

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

(DOB Application No. 402213993)

Adopted by the Board of Standards and Appeals, July 28, 2009.

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory

convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ian Peter Barnes.

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

271-81-BZ

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

SUBJECT – Application June 4, 2009 – Extension of Term (§73-11) to reopen waive the rules and amend special permit for a term of ten years for physical culture establishment.

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling (North Shore Towers) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik, Mike Littman and Errol Brett. For Opposition: Barbara Leonardi and Dianne Stromfeld.

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

55-97-BZ

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

SUBJECT – Application March 18, 2009 – Extension of

MINUTES

term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously 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 August 18, 2009, at 10 A.M., for continued hearing.

246-01-BZ

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

SUBJECT – Application January 29, 2009 – Extension of Term for a previously granted special permit (§73-36) which permitted the operation of Physical Culture Establishment (Bodhi Fitness Center) within a M1-1/C2-2 zoning district.

The application seeks to reflect the new owner/operator of the site. The term of the previous grant expired on June 1, 2008.

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

COMMUNITY BOARD #7Q

APPEARANCES – None.

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

128-04-BZ

APPLICANT – Marvin B. Mitzner, Esq., for Park East Day School, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy/waiver to a previously granted Variance for the enlargement of an existing school, in an R8B zoning district, which expired on December 14, 2008.

PREMISES AFFECTED – 162-168 East 68th Street, south side of East 68th Street, 100' west of Third Avenue, Block 1402, Lots 41 & 42, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Marvin Mitzner.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August

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

197-05-BZ

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

SUBJECT – Application April 17, 2009 – Reopening for an amendment to the resolution for full commercial coverage on the ground floor and commercial FAR of 0.82. Zoning District C6-1.

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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.

APPEALS CALENDAR

22-09-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Incorporated, owner; Maura Roche, lessee.

SUBJECT – Application February 10, 2009 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street and the upgrade of an existing non complying private disposal system contrary to General City Law Section 35 and

MINUTES

contrary to Department of Buildings Policy. R4 Zoning. PREMISES AFFECTED – 663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street. Block 16350, Lot 300, Borough of Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 5, 2009, and acting on Department of Buildings Application No. 410199002 reads, in pertinent part:

- “A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.
- A2- The street giving access to the existing building to be altered is not duly placed on the official map of the City of New York, therefore:
 - A) A Certificate of Occupancy may not be issued as per Article3, Section 36 of the General City Law.
 - B) Existing dwelling to be altered does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York;” and
- A3- The proposed upgraded private disposal system is in the bed of the mapped street and /or service lane is contrary to Department of Buildings’ policy;” and

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

WHEREAS, by letter dated March 9, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 2, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 23, 2009, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated February 5, 2009, acting on Department of Buildings Application No. 410199002, is modified by the power vested in the Board by Sections 35 and 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received February 10, 2009” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, July 28, 2009.

55-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Kay Rail and William Kahaly, lessees.

SUBJECT – Application April 9, 2009 – Proposed reconstruction and enlargement of an existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing no conforming private disposal system in the bed of the service road contrary to Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 1 Kildare Walk, southeast corner of Kildare Walk and Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 3, 2009, and acting on Department

MINUTES

of Buildings Application No. 410230664 reads, in pertinent part:

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

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

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 17, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 15, 2009, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated April 3, 2009 acting on Department of Buildings Application No. 410230664, is modified by the power vested in the Board by Sections 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 9, 2009 ” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, July 28, 2009.

165-09-A

APPLICANT – Law Office of Howard Goldman, for 13 Hendricks LLC, owner.

SUBJECT – Application April 30, 2009 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R4 district regulations. R3 Zoning district.

PREMISES AFFECTED – 150 Hendricks Avenue, between Jersey Street and Bismark Avenue, Block 44, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Chris Wright.

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

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed three-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, the site was inspected by Commissioner Montanez; and

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

WHEREAS, the applicant proposes to develop the subject site with a three-story, 11-unit residential building; and

WHEREAS, the subject premises was formerly located partially within an R4 zoning district and partially within an R5 zoning district, within the Special Hillside Preservation District; and

WHEREAS, however, on October 25, 2006 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Stapleton Rezoning, which rezoned the R4 portion of the site to R3A; and

WHEREAS, the applicant represents that the building complies with the former R4 and R5 district parameters, specifically the floor area of approximately 6,575 sq. ft., and the use as an 11-unit multiple dwelling was permitted; and

WHEREAS, because the site is now partially within an R3A district, the proposed building does not comply with the maximum permitted floor area of approximately 5,175 sq. ft. or the restriction to use as a one- or two-family detached home; and

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

WHEREAS, New Building Permit No. 500483256 was issued by DOB on July 21, 2003 (the “Permit”), permitting the

MINUTES

construction of the subject building, prior to the Rezoning Date; and

WHEREAS, a DOB submission further states that the Permit was lawfully issued; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained a permit for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

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

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction of the proposed building was completed, but a certificate of occupancy was not obtained within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the NB Permit pursuant to ZR § 11-332 before the deadline of November 26, 2008 and is therefore requesting additional time to complete construction under the common law and obtain a certificate of occupancy; and

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

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

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right.’ Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;” and

WHEREAS, as to substantial construction, the Board

notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that aside from completing the foundation, as of the Rezoning Date all work on the proposed building was complete except for interior finishes; and

WHEREAS, the applicant states that since DOB vested the Permit under ZR § 11-331, the owner has completed all of the interior finishes for the proposed building and applied for a certificate of occupancy in July 2008; and

WHEREAS, on July 10, 2008, DOB issued a Certificate of Occupancy Inspection Work Order Form (“CO Inspection Order”) listing all remaining objections to be addressed prior to the issuance of a certificate of occupancy; however, the two year time frame to obtain a certificate of occupancy expired on October 26, 2008, before the issues were addressed; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site prior to the lapse of the Permit; a construction timeline, an affidavit of the project manager; invoices; and check details; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, the applicant states that the owner has expended \$1,302,904, including hard and soft costs and irrevocable commitments, out of \$1,326,904 budgeted for the entire project, and that the remaining costs for the project are soft costs associated with obtaining the certificate of occupancy; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, check details, and an affidavit from the project manager; and

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

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

WHEREAS, as to serious loss, such a determination may be based in part upon a showing that certain of the expenditures

MINUTES

could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant states that the floor area that would result if vesting is not permitted would be reduced from 6,560 sq. ft. to 5,160 sq. ft.; and

WHEREAS, the applicant states that this would lead to serious loss because, in order to comply with the rezoning, at a minimum the owner would have to eliminate the entire third floor of the completed three story building; and

WHEREAS, the applicant further states that the subject building is an 11-unit multiple dwelling and that the R3A zoning district restricts use of the building to a one- or two-family detached home; and

WHEREAS, the applicant contends that in order to comply with this restriction, the entire building would have to be demolished, resulting in a complete loss of all project costs to date, or \$1,302,904; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with constructing a complying building; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, and the \$1,302,904 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 500483256, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 28, 2009.

172-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Susan & Brett Flynn, lessees.

SUBJECT – Application May 19, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

PREMISES AFFECTED – 10 Gotham Walk, west side of Gotham Walk, 105.46' south of mapped Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 7, 2009, and acting on Department of Buildings Application No. 410233929, reads in pertinent part:

“A-1 The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the official map of the city of New York, therefore:

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

B) The existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A-2 The proposed upgraded private disposal system is partially in the bed of the Service road contrary to Building Department Policy;” and

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated June 4, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated May 7, 2009, acting on Department of Buildings Application No 410233929, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 19, 2009” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure

MINUTES

compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals, July 28, 2009.

191-09-A

APPLICANT – Michael T. Cetera, AIA, for Devorah Halberstam, owner.

SUBJECT – Application June 16, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 zoning district.

PREMISES AFFECTED – 1291 Carroll Street, north side, 60' west of the intersection of Brooklyn Avenue and Carroll Street, Block 1284, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete an enlargement of a single-family home under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

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

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site has a lot area of 2,180 sq. ft. and is on the north side of Carroll Street, 60 feet west of the intersection with Brooklyn Avenue, within an R2 zoning district; and

WHEREAS, the site is occupied by a single-family home, which the applicant represents was constructed in approximately 1919; and

WHEREAS, the applicant proposes to enlarge the home at the rear for a width of 15 feet, with portions of the garage roof, second and third floors built within 30 feet of the rear lot line (the "Rear Enlargement"); the noted construction is part of a larger construction plan, which includes the

reconstruction and renovation of portions of the existing home and the construction of a rooftop dormer; and

WHEREAS, the portions of the Rear Enlargement located within the 30-ft. rear yard include: a roof terrace above the reconstructed garage, with parapets at a required minimum height of 4'-0"; portions of the basement, first and second floors, including the north façade and an encroachment to a depth of 3'-6 ½" on the first floor between the garage and the home; and the entire second-floor den and portions of the new second-floor kitchen and a new third-floor bedroom; and

WHEREAS, the applicant represents that the construction not associated with the Rear Enlargement complies with the zoning at the time of the issuance of the permits and now; and

WHEREAS, the applicant notes that the reconstructed garage, built on the footprint of the prior garage, is a permitted obstruction in the rear yard, however it was required to be reconstructed in order to support the roof terrace and den located on the second floor; and

WHEREAS, accordingly, the applicant included the work and the expenditures associated with the reconstruction of the garage in the discussion of work completed and expenditures made towards the portions of the Rear Enlargement which would not be permitted if the applicant were not able to vest the permits; and

WHEREAS, prior to a zoning amendment, construction, such as the Rear Enlargement, was permitted within the rear yard of buildings within 100 feet of the corner; and

WHEREAS, however, on April 30, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt an amendment to ZR §§ 23-541, 23-44, and other related yard sections which eliminated R2 zoning districts from the list of zoning districts within which properties within 100 feet of an intersection are exempt from the rear yard requirement; and

WHEREAS, because the site is now within a zoning district that requires a rear yard with a minimum depth of 30 feet, the Rear Enlargement does not comply with yard regulations; and

WHEREAS, the applicant represents that the home complies with the version of the ZR in effect at the time the permits were issued and work proceeded, and seeks no other relief; and

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

WHEREAS, the applicant states that DOB approved the building plans on June 28, 2007, pursuant to DOB App. No. 302327328; and

WHEREAS, the applicant states that on July 11, 2007, DOB issued Permit No. 302327328 (the "Alteration Permit"), permitting all construction on the home, including the Rear Enlargement, prior to the Enactment Date; and

WHEREAS, the Board finds that the record for the case contains sufficient evidence to make the finding that the applicant had a validly issued permit prior to the Enactment

MINUTES

Date; and

WHEREAS, the applicant states that the initial work performed included demolition, excavation, and foundation work; and

WHEREAS, because more than a year elapsed between the Enactment Date and DOB's issuance of a Stop Work Order, documentation of construction progress, which the applicant, unaware of the text change, did not realize would become relevant, was lost; and

WHEREAS, the Board notes that the text change affected all low density residential zoning districts citywide, unlike a rezoning which affects an isolated neighborhood and that DOB examiners and architects practicing within a specific area may have been more alerted to; and

WHEREAS, the applicant represents that on November 5, 2007, all excavation and foundation work was completed and construction of the Rear Enlargement was commenced and, on or about December 25, 2007, the applicant represents that masonry work had been completed; and

WHEREAS, by March 21, 2008, the third floor of the Rear Enlargement was completed, plywood sub floors installed in the rear extension and rough plumbing had been commenced and by April 1, 2008, exterior walls, sub floors, and roofing had been installed on the Rear Enlargement; and

WHEREAS, the applicant represents that on the Enactment Date, the structure for the Rear Enlargement had been completed, rough plumbing work had been installed, and all that remained was the installation of exterior doors, windows, and interior finishes; and

WHEREAS, on June 13, 2008, DOB audited the building plans and issued a notice of objections for matters related to other construction at the home and unrelated to the Rear Enlargement; and

WHEREAS, the applicant states that it was not aware of the amendment to the zoning resolution and it was also not the subject of DOB's review, so DOB did not evaluate the Rear Enlargement; and

WHEREAS, in the intervening months, the applicant represents that it worked to resolve zoning issues associated with other construction on the home, which has progressed in conjunction with the Rear Enlargement; and

WHEREAS, on March 23, 2009, the Alteration Permit expired during DOB's audit and review process and a Stop Work Order was ultimately issued; and

WHEREAS, the applicant represents that as of the issuance of the Stop Work Order, 95 percent of the work on the Rear Enlargement had been completed; and

WHEREAS, on June 3, 2009, DOB issued audit review objections, which stated that the construction in the rear yard was contrary to ZR § 23-44, as of the Enactment Date; and

WHEREAS, the applicant represents that no work has been performed at the site since March 23, 2009; and

WHEREAS, the Alteration Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new ZR § 23-44 as modified by ZR § 23-541 and DOB did not visit the site on the Enactment Date to evaluate

the construction; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that before the Enactment Date, the owner had completed the structure for the Rear Enlargement, rough plumbing work had been installed, and all that remained was the installation of exterior doors, windows, and interior finishes; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site prior to the Enactment Date; affidavits from the architect and contractor; construction contracts; invoices; and cancelled checks; and

WHEREAS, the Board concludes that given the scale of the construction involving a single-family home, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Enactment Date, and that said work was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date,

MINUTES

substantial construction had been completed and substantial expenditures were made after the issuance of the Alteration Permit; and

WHEREAS, more specifically, the applicant represents that: (1) the owner of the site will suffer serious economic harm without the right to build under the Alteration Permit, as the entire north façade would need to be re-designed and rebuilt; (2) substantial construction had occurred by the Enactment Date because: (i) all portions of the existing building not intended to be incorporated into the enlarged and altered building had been removed and (ii) excavation was complete; and (3) substantial expenditures had been made by the time of the Enactment because significant sums had been either expended or committed through irrevocable contracts; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$66,900 on construction and \$20,490 on architecture, design, and project management for the Rear Enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, invoices, and cancelled checks; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid a total of \$87,390 for architecture fees, design, project management, and construction; and

WHEREAS, the Board directed the applicant to remove certain costs associated with the garage since the garage would be permitted to remain under the current zoning and its value would not be lost; and

WHEREAS, accordingly, the applicant subtracted \$8,450 in garage costs associated with masonry work, which could remain; the applicant maintained the costs for the garage footing, underpinning, and roof assembly, because they would not have been required for the basic reconstruction of the garage but were required to support the additional construction above the garage; and

WHEREAS, the total expenses, less the garage masonry, are \$78,940; and

WHEREAS, the applicant represents that the property owner has made irrevocable commitments for other services associated with the Rear Enlargement, including that for \$61,000 in custom kitchen cabinets, which would be lost if demolition were required; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the expenses expected for such development; and

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

WHEREAS, as to the serious loss that the owner would incur if required to demolish the Rear Enlargement and eliminate any construction, other than the garage within the required 30-ft. rear yard, the applicant states that the

home would need to be redesigned, including the reconfiguration of the kitchen, which includes plumbing lines and would compromise the integration of the new construction and the existing home; and

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

WHEREAS, the applicant submitted a proposal estimating that the costs associated with redesigning and reconstructing the Rear Enlargement for a complying development would be approximately \$57,250; \$29,900 would be required if the applicant were required to demolish the Rear Enlargement and another \$27,350 would be required to rebuild the rear of the home subsequent to the demolition; and

WHEREAS, the Board notes that the \$57,250 figure would be in addition to the expenditures for the enlargement, noted above, which would be lost; and

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

WHEREAS, the Board notes that its conclusion that serious loss would occur includes consideration of the costs related to the need to demolish portions of the Rear Enlargement, revise the plans, and rebuild the rear of the home at the first, second, and third floors; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a rescission of the Stop Work Order and a reinstatement of DOB Permit No. 302327328, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 28, 2009.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

MINUTES

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: None.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 28, 2009
1:30 P.M.

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

ZONING CALENDAR

18-09-BZ

CEQR #09-BSA-068M

APPLICANT – Stuart A. Klein, for Ascot Properties, Ltd., owner; Gold’s Gym, lessee.

SUBJECT – Application February 6, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the first, second and third floors in an existing twelve-story building. The proposal is contrary to ZR § 32-10. C6-5, C6-7 and Special Midtown Districts. PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Klein.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated February 4, 2009, acting on Department of Buildings Application No. 110405491, reads in pertinent part:

“Proposed adult physical culture establishment requires BSA special permit as per ZR 33-21, 73-36 and publication in the city record;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-5 zoning district within the Special Midtown District, the legalization of a physical culture establishment (PCE) on the first, second, and third floors of a 12-story commercial building, contrary to ZR § 32-10; and

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

WHEREAS, Community Board 5, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the south side of West 54th Street between Broadway and Eighth

MINUTES

Avenue, in a C6-5 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 22,900 sq. ft., which includes 4,800 sq. ft. on the first floor, 10,500 sq. ft. on the second floor, and 7,600 sq. ft. on in the third floor; and

WHEREAS, the PCE is operated as Gold's Gym; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 12:00 a.m.; Saturday, from 8:00 a.m. to 10:00 p.m.; and Sunday, from 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since November 1, 2001, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between November 1, 2001 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA068M, dated February 6, 2009; and

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

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-5 zoning district within the Special Midtown District, the legalization of a physical culture establishment on the first, second, and third floors of an existing 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 28, 2009"- One (1) sheet and "Received June 15, 2009"- Four (4) sheets and *on further condition*:

THAT the term of this grant shall expire on November 1, 2011;

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, July 28, 2009.

30-09-BZ CEQR #09-BSA-097Q

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special

MINUTES

Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 24, 2009, acting on Department of Buildings Application No. 410044287, reads in pertinent part:

“Proposed new building with commercial retail, offices and community facilities (Use Groups 6 and 4) provides 102 valet parking spaces which is less than the requirement of ZR 36-21;” and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C4-3 zoning district, a reduction in the required number of accessory parking spaces for a proposed ten-story mixed-use building with retail, ambulatory diagnostic or treatment facility and commercial office uses (Use Groups 4 and 6) from 165 to 102, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in *The City Record*, with a continued hearing on June 23, 2009, and then to decision on July 28, 2009; and

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

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

WHEREAS, the subject site is located on the north side of 37th Avenue, between Main Street and Union Street, and has a lot area of approximately 13,782 sq. ft.; and

WHEREAS, the site is currently occupied by an eating and drinking establishment, which will be demolished to permit construction of the proposed building; and

WHEREAS, specifically, the applicant proposes to construct a 66,144 sq. ft. (4.8 FAR), ten-story mixed-use building with retail, ambulatory diagnostic or treatment facility and commercial office uses, and with 102 accessory parking spaces located in a cellar and sub-cellar garage; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, complies and conforms with all zoning district

regulations; and

WHEREAS, accordingly, the Board’s review was limited to the request for a parking reduction from 165 spaces to 102 spaces, pursuant to the special permit; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-3 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic or treatment facilities listed in Use Group 4 and for Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of required parking spaces for all ambulatory diagnostic and treatment facility and office use at the site is 165; and

WHEREAS, the applicant represents that the site cannot accommodate 165 accessory parking spaces and that the contemplated development of the site does not require 165 accessory parking spaces; and

WHEREAS, the proposed ambulatory diagnostic and treatment facility and commercial office uses (Use Groups 4 and 6) will occupy 50,446 sq. ft. of the 66,144 sq. ft. of total floor area in the proposed building, and under the special permit authorized by ZR § 73-44 the number of parking spaces could be reduced to 102 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 102 attended parking spaces and 12 reservoir spaces for vehicles entering the garage; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facilities listed in Use Group 4 and the Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the property owner stating that floors three through ten of the proposed building will contain ambulatory diagnostic or treatment facility and commercial office uses and that the owner will not change the uses on floors three through ten to any use in parking requirement category B unless additional off-street parking spaces sufficient to meet such additional requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in maintaining the proposed use at the site; and

WHEREAS, the applicant’s original proposal provided 97 spaces, based on a parking calculation which indicated that 153 spaces were required for the subject building; and

MINUTES

WHEREAS, at hearing, the Board questioned the applicant's exclusion of elevator and stairwell floor area from the building's parking calculation; and

WHEREAS, in response, the applicant revised its parking calculation to include the elevator and stairwell floor area, thus reflecting that 165 spaces are required for the building and 102 spaces are permitted under the special permit; and

WHEREAS, at hearing, the Board raised concerns about the operational plan of the proposed parking garage; and

WHEREAS, in response, the applicant submitted a narrative of the operational plan, describing the circulation pattern for the garage; and

WHEREAS, at hearing, the Board also questioned whether the operation of the parking garage would interfere with loading activity due to the location of the garage's reservoir spaces; and

WHEREAS, in response, the applicant agreed to limit the hours of loading activity at the subject site to between the hours of 7:00 p.m. and 7:00 a.m., when parking activity is at a minimum, and submitted an off-hours cellar floor plan reflecting the location of five off-hours reservoir spaces to accommodate the few vehicles that utilize the garage during that time; and

WHEREAS, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-097Q, dated February 27, 2009; 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, the New York City Landmarks Preservation Commission ("LPC") review of archaeological sensitivity models and historic maps indicates a potential for

the recovery of remains from 19th Century residential occupation and portions of the Friends Cemetery on the subject site; and

WHEREAS, accordingly, the applicant has agreed to conduct an archaeological documentary study to clarify these initial findings and to adhere to all requirements for archaeological identification, investigation and mitigation, pursuant to a Restrictive Declaration ("RD") executed on July 23, 2009 and recorded against the subject property on July 27, 2009; 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 under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03, to permit, within a C4-3 zoning district, a reduction in the required number of accessory parking spaces for a proposed ten-story mixed-use building with ambulatory diagnostic or treatment facility and commercial office uses (Use Groups 4 and 6) from 165 to 102, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received June 9, 2009"-(11) sheets and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 102 parking spaces shall be provided in the accessory parking garage for the proposed use;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the issuance of any grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance shall be conditioned on the issuance of either a Notice of No Objection, a Notice to Proceed, a Notice of Satisfaction, or a Final Notice of Satisfaction, as applicable, from the LPC;

THAT the issuance of a Certificate of Occupancy shall be conditioned on the issuance of a Final Notice of Satisfaction or a Notice of No Objection by the LPC;

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

THAT the layout and design of the accessory parking

MINUTES

garage and loading berths shall be as reviewed and approved by the Department of Buildings;

THAT substantial construction be completed in accordance with ZR § 73-70;

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 of 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 28, 2009.

169-08-BZ

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

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district. PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25’ of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Alexander Harrow.

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

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6) on a vacant lot. The proposal is contrary to ZR § 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

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

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) for the In-Part Legalization and enlargement of a single family home. This application seeks to vary floor area (§23-141) in an R3-1 zoning district.

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

COMMUNITY BOARD #15BK

APPEARANCES – None.

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

9-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. The proposal is contrary to ZR Section 42-10. M1-1 district.

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

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

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.

23-09-BZ

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

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

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

MINUTES

COMMUNITY BOARD #15BK

APPEARANCES – None.

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

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto and David Salamon.

For Opposition: Deborah Nance, Meville Thorne, Eliza Butler, Liz Maria Mendez and Pearl C.

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

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to bulk regulations (ZR §23-533, §23-145, §23-711, §23-861). R6B District.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Steve Rizzo, Patrick Mahon, Gil Shulman, Robert Pauls and Stephan Rizzo.

For Opposition: Nina Jones, Liza Borge, Matthew Lawrence, Kimberly Boyle, Patricia Tessier, Daniel Abramson, Byron Woollen and Johnny Werbe.

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

176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit pursuant to §73-64 to waive height and setback regulations (ZR §33-432) for a community facility building (Fashion Institute of Technology). C6-2 District.

PREMISES AFFECTED – 220-236 West 28th Street, south

side of West 28th Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter, Lisa Wager, Chris Hall
For Opposition: Lori Buchbiden.

THE VOTE TO CLOSE HEARING –

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.