
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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266-09-BZ

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267-09-BZ

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268-09-BZ

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269-09-BZ

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270-09-BZ

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271-09-BZ

132-40 Metropolitan Avenue, Between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street., Block 9284, Lot(s) 19, Borough of **Queens, Community Board: 9**. Special Permit (73-36) to legalize the operation of a physical culture establishment. C2-3/R6 district.

DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

OCTOBER 20, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 20, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard aka 129-02 New York Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application August 28, 2009 – Extension of Term of a Special Permit (73-35) for the continued operation of a UG15 Amusement Arcade (Smile Arcade) which will expire on January 6, 2010. M2-1 zoning district.

PREMISES AFFECTED – 31-07/09/11 Downing street, Block 427, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (New York Sports Club); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000 and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76th Street, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to previously approved plans and does not comply with maximum Lot Coverage (ZR §105-33) and Maximum Height (ZR §23-631). R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for Gabriel Realty, LLC, owner.

SUBJECT – Application August 27, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

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

COMMUNITY BOARD #1BK

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination under the Title 28 Section 28-105.9 of the Administrative Code that the permit for the subject premises expired and became invalid because the permitted work or use was not commenced within 12 months from the date of issuance.

PREMISES AFFECTED – 363 Lafayette (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

OCTOBER 20, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 20, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

180-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations ZR §22-00. R3-1 District.

PREMISES AFFECTED – 1735 Richmond Avenue, 296.35' north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

187-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (72-21) to permit the construction of a mikvah (ritual bath) in the proposed building, The proposal is contrary to ZR sections 24-11 (FAR) and lot coverage, 24-35 (side yard) and 24-36 (rear yard). R3-1 district.

PREMISES AFFECTED - 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton Avenues, Block 8726, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 22, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

416-87-BZ

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

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

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

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for the continued operation of a Use Group 16 automobile repair shop with accessory uses; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in *The City Record*, and then to decision on September 22, 2009; and

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

WHEREAS, Community Board 9, Manhattan, recommends approval of this application, with conditions; and

WHEREAS, the site is located on the north side of West 133rd Street, between Broadway and Amsterdam Avenue; and

WHEREAS, the applicant states that the eastern 50 feet of the site is located within an R7-2 zoning district, and the western 25 feet of the site is located within a C6-1 zoning district within Subdistrict A of the Special Manhattanville Mixed Use District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 28, 1925 when, under BSA Cal. No. 384-25-BZ, the Board granted a variance to permit the construction of a two-story garage for more than five vehicles, without a rear yard; and

WHEREAS, on December 15, 1953, under BSA Cal. No. 384-25-BZ, the Board granted the addition of motor vehicle repairs, paint spraying, and welding on the second floor, for a term of five years; and

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

WHEREAS, on June 27, 1989, under the subject calendar number, the Board permitted the re-establishment of the grant to permit an automobile repair shop, including transmission work, welding, body and fender work, incidental painting, and parking for cars awaiting service, and the legalization of a change in use to eliminate public parking; and

WHEREAS, most recently, on February 26, 2002, under the subject calendar number, the Board granted a ten year extension of the term, to expire on June 27, 2009; and

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

WHEREAS, the applicant notes that at the time of the Board's previous grant, the portion of the site located in the C6-1 district was zoned M1-2; however, on December 19, 2007, the City Council rezoned the M1-2 district to a C6-1 district within Subdistrict A of the Special Manhattanville Mixed Use District; and

WHEREAS, the applicant states that an automobile repair shop is permitted within Subdistrict A of the Special Manhattanville Mixed Use District, pursuant to ZR § 104-32; and

WHEREAS, the applicant states that the first floor is operated as a Use Group 16 automobile repair shop with parking for cars awaiting service, while the second floor is operated as a Use Group 16 automobile repair shop with welding, body and fender work, and incidental painting; and

WHEREAS, at hearing, the Board directed the applicant to remove all graffiti from the site, confirm that all signage on the portion of the site within the R7-2 zoning district complies with C1 district regulations, and ensure that the spray paint booth will comply with all applicable New York State Department of Environmental Conservation ("DEC") and New York City Environmental Protection ("DEP") rules and regulations prior to obtaining a new certificate of occupancy; and

WHEREAS, in response, the applicant submitted photographs reflecting that all graffiti has been removed from the site, a sign analysis reflecting that all signage on the premises complies with C1 district regulations, and an affidavit from the second floor tenant stating that the spray paint booth will comply with all applicable DEC and DEP rules and regulations prior to obtaining a new certificate of occupancy; and

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WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 1989, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 27, 2009, to expire on June 27, 2019, and to grant an extension of time to obtain a certificate of occupancy to March 22, 2010; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received August 19, 2009”-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on June 27, 2019;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage located on the portion of the site within the R7-2 zoning district shall comply with C1 zoning district regulations;

THAT the spray paint booth located on the second floor shall comply with all applicable DEC and DEP regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by March 22, 2010;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 102165791)

Adopted by the Board of Standards and Appeals, September 22, 2009.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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 November 17, 2009, at 10 A.M., for decision, hearing closed.

194-97-BZ

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

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

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

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: 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 October 20, 2009, at 10 A.M., for decision, hearing closed.

115-53-BZ

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

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

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

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Paltnik.

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

191-53-BZ

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

SUBJECT – Application August 17, 2009 – Extension of Time and Waiver of the Rules to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*) which

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expired on September 21, 2001. C2-2/R7-1 zoning district.
PREMISES AFFECTED – 42-02/18 Queens Boulevard,
south side blockfront from 42nd Street to 43rd Street, Block
169, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

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 October
20, 2009, at 10 A.M., for decision, hearing closed.

613-74-BZ

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

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jay Segal.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty
LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a
previously issued resolution that seeks to remove the
condition that a residential unit be occupied by a qualified
senior citizen at a subsidized rate for a term of 10 years,
from the date of the issuance of the Certificate of
Occupancy. R6 zoning district.

PREMISES AFFECTED – 88 Jane Street, between
Washington and Greenwich Streets, Block 641, Lot 7501,
Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

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

272-07-BZ

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

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

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

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

APPEALS CALENDAR

318-08-A

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

SUBJECT – Application December 31, 2008 – Proposed
construction of an enlargement to an existing commercial
establishment located within the bed of a mapped street,
contrary to General City Law §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

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated December 2, 2008, acting on Department
of Buildings Application No. 410055675, reads in pertinent

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part:

“The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law;” and

WHEREAS, this application seeks to enlarge an existing one-story commercial use located partially within the bed of Cornaga Avenue, a mapped street; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with a continued hearing on September 22, 2009, and then to closure and decision on the same date; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 22, 1953 when, under BSA Cal. No. 393-53-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station located in a business use district; and

WHEREAS, the applicant states that the site is currently occupied by an automobile repair shop and that the proposed enlargement will be occupied by commercial stores, all of which are permitted as-of-right in the subject C8-1 zoning district; accordingly, the applicant wishes to surrender the variance granted under BSA Cal. No. 393-53-BZ; and

WHEREAS, the Board notes that it accepts the surrender of the grant made pursuant to BSA Cal. No. 393-53-BZ, on condition that the Department of Buildings confirms that the site complies with all relevant zoning regulations; and

WHEREAS, by letter dated March 6, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing 24-inch diameter sanitary sewer and a 12-inch diameter water main in Cornaga Avenue between Beach 21st Street and Beach 22nd Street, and as per Drainage Plan No. 50S55, 50SW36, Sheet 2, there is a future 42-inch diameter storm sewer and a 24-inch diameter sanitary sewer planned for Cornaga Avenue between Beach 21st Street and Beach 22nd Street; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the mapped width of the street in Cornaga Avenue between Beach 21st and Beach 22nd Street; and (2) the distance from the existing water mains and sewer to the lot lines in Cornaga Avenue between Beach 21st Street and Beach 22nd Street; and

WHEREAS, in response, the applicant submitted a revised survey reflecting that Cornaga Avenue has a total width of 60 feet between Beach 21st Street and Beach 22nd Street, and the remaining approximately 50-foot width of the traveled portion of the street will be available for the construction, maintenance and/or reconstruction of the existing 24-inch diameter sanitary sewer, the 12-inch diameter water main, and the future 42-inch diameter storm sewer; and

WHEREAS, by letter dated July 17, 2009, DEP states that it has reviewed the revised survey and has no further

objections; and

WHEREAS, by letter dated March 30, 2009, the Department of Transportation (DOT) states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with all parking requirements; and

WHEREAS, in response, the applicant submitted a letter stating that the existing parking for the automobile repair shop complies with the zoning district requirements and that no additional parking is required for the proposed enlargement; 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 December 2, 2008, acting on Department of Buildings Application No. 410055675, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received December 31, 2008” – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, September 22, 2009.

45-09-A

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

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted.

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THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of a six-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 25, 2009, and then to decision on September 22, 2009; and

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

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

WHEREAS, the subject site is located on the northeast corner of Cherry Avenue and Bowne Street, within a C1-3 (R7B) zoning district; and

WHEREAS, the subject site has 28 feet of frontage on Cherry Avenue, 95 feet of frontage on Bowne Street, and a total lot area of 2,660 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story mixed-use residential/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 8,031 sq. ft. (3.02 FAR); and

WHEREAS, the site was formerly located within a C1-2 (R7-1) zoning district; and

WHEREAS, on September 24, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Waldheim Rezoning, which changed the zoning district to C1-3 (R7B); and

WHEREAS, the applicant represents that the Building complies with the former C1-2 (R7-1) zoning district parameters; specifically, the proposed 3.02 FAR and the absence of a front yard were permitted; and

WHEREAS, because the site is now within a C1-3 (R7B) zoning district, the Building would not comply with the maximum FAR of 3.0, the requirement that the building be set back 5’-9” to match the street wall location of the adjacent building, or other requirements of the Quality Housing Program; and

WHEREAS, because the Building is not in compliance with these provisions of the C1-3 (R7B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order (“SWO”) on September 25, 2008 halting work on the building; and

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

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; 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 Board notes that New Building Permit No. 410002697-01-NB (the “Permit”), which authorized the development of a six-story mixed-use residential/ community facility building pursuant to C1-2 (R7-1) zoning district regulations was issued on May 20, 2008; and

WHEREAS, by letter dated May 8, 2009, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new C1-3 (R7B) zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on September 24, 2008; and

WHEREAS, the validity of the Permit has not been challenged; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d 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 applicant states that prior to the Enactment Date, the following work was completed: (1) 80 percent of the excavation; (2) 180 linear feet of shoring, constituting 100 percent of shoring; (3) 100 percent of foundation footings; (4) 90 percent of foundation walls; (5) 100 percent of the

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elevator piston shaft, concrete column buttresses, beam pockets and elevator pit; and (6) approximately 152 cubic yards of concrete poured for the foundations; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: construction contracts, photographs of the site, concrete pour tickets, a signed statement from the architect, copies of cancelled checks, and invoices for labor and materials; and

WHEREAS, the Board concludes that given the size of the site, 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 Enactment Date; 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 prior to the lapse of the Permit, the owner expended \$196,184.75, including hard and soft costs and irrevocable commitments for the entire project, out of \$219,745 budgeted for the foundation of the proposed development and \$1,520,800 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted copies of cancelled checks, construction contracts, invoices, and receipts; 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 the serious loss finding, the applicant contends that the costs associated with complying with the C1-3 (R7B) zoning district if vesting were not permitted is significant; and

WHEREAS, the applicant states that the need to provide a 5'-9" front yard would force the owner to either demolish the existing foundation and build anew or shift the building back 5'-9" to provide the requisite front yard, which might necessitate the reconfiguration of the unit layout; and

WHEREAS, the applicant represents that demolishing the existing foundation and building anew would result in a loss of \$206,895, including \$92,000 associated with redesign costs; and

WHEREAS, the applicant further represents that shifting the building back 5'-9" and re-using some of the existing foundations would result in a loss of \$216,600, including \$105,000 associated with redesign costs; and

WHEREAS, the applicant states that reconfiguring the existing foundation would result in further loss because the

owner would have to change the layout on floors two through six from two one-bedroom apartments to one small two-bedroom apartment and a studio apartment, which would be difficult to market and may not comply with Quality Housing requirements; and

WHEREAS, the applicant states that further financial loss would stem from the fact that the new zoning would require that the building be developed in accordance with Quality Housing and new Building Code requirements, which would include a recreation space and a larger elevator shaft than what is currently proposed; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 410002697-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted, and the Board hereby extends the time to complete the proposed development for four years from the date of this resolution, to expire on September 22, 2013.

Adopted by the Board of Standards and Appeals, September 22, 2009.

188-09-A

APPLICANT – John Natoli, for Michael Ortega, owner.
SUBJECT – Application June 10, 2009 – Legalization of a one-story enlargement to an existing home located within the bed of a mapped street, contrary to General City Law §35. R3-2 zoning district.

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Natoli

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

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Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 5, 2009, acting on Department of Buildings Application No. 410095757, reads in pertinent part:

“Building front and side portion in the bed of a mapped street which is contrary to General City Law 35;” and

WHEREAS, this application seeks to legalize a one-story enlargement to an existing single-family home located in the bed of Noel Road, a mapped street; and

WHEREAS, a public hearing was held on this application on September 22, 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 July 7, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 7, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing ten-inch diameter sanitary sewer, 30-inch by 19-inch diameter storm sewer, and an eight-inch diameter city water main in Noel Road between Lanark Road and West Road, and there is a ten-inch diameter sanitary sewer and eight-inch diameter water main in Lanark Road between Noel Road and 8th Road; and

WHEREAS, DEP further advises that the latest Amended Drainage Plans No. 48S(1) and 48SW(1) call for a future ten-inch diameter sanitary sewer and 15-inch/18-inch diameter storm sewer in Noel Road between Lanark Road and West Road, and for a future ten-inch diameter sanitary sewer in Lanark Road between Noel Road and 8th Road; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the total width of Noel Road, the width of the widening portion of the street between Lanark Road and West Road, and the width of Lanark Road and the widening portion of the street between Noel Road and 8th Road; and (2) the distance between the westerly lot line of Lot 9 and the existing eight-inch diameter city water main, and the distance between the terminal manhole of the existing ten-inch diameter sanitary sewer and the southerly lot line of Lot 9 in Lanark Road; and

WHEREAS, in response, the applicant submitted a revised survey reflecting that: (1) Noel Road has a total width of 55 feet; (2) access is available for the remaining 50 feet of Noel Road between Lanark Road and West Road for the installation, maintenance and/or reconstruction of the future 15-inch/18-inch diameter storm sewer, ten-inch diameter existing sanitary sewer, 30-inch by 19-inch diameter existing storm sewer, and eight-inch diameter city water main; (3) Lanark Road has a total width of 50 feet; and (4) access is available for the remaining 30 feet of Lanark Road between Noel Road and 8th Road for the installation, maintenance and/or reconstruction of the ten-inch diameter existing sanitary sewer and the eight-inch diameter city water main; and

WHEREAS, by letter dated August 6, 2009, DEP states that it has reviewed the revised survey and has no further objections; and

WHEREAS, by letter dated August 14, 2009, the Department of Transportation states that the applicant’s property is not included in the agency’s ten-year capital plan; and

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 5, 2009, acting on Department of Buildings Application No. 410095757 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 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, September 22, 2009.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Carol Donovan, Kathleen Meaghan and Helen Kravetz.

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

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159-09-A

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

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

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

167-09-A

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

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building’s determination that the reconstruction of non-complying building must be done in accordance with §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

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

For Administration: Lisa Orrantia, DOB.

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

217-09-A

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

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

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

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Administration: Council Member Rosie Mendez, Brian Cook (Manhattan Borough President), Carlos Rosa (CB#3M), Marvey Epstein and Monte Shapiro.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, SEPTEMBER 22, 2009 1:30 P.M.

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

ZONING CALENDAR

241-08-BZ

CEQR #09-BSA-029R

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), contrary to §32-10. R3-1 zoning 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: Adam Rothkrug.

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 Staten Island Borough Commissioner dated August 25, 2008, acting on Department of Buildings Application No. 510051523, reads:

“The proposed commercial use (Use Group 6) is not permitted as-of-right in R3 zoning district[s] and is contrary to Section 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R3-1 zoning district, a one-story building to be occupied by commercial use (Use Group 6), contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due publication in *The City Record*, with continued hearings on June 23, 2009 and July 28, 2009; on September 22, 2009, the case was reopened and closed and then a decision was rendered; and

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

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Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board, 2, Staten Island recommends approval of this application with the condition that a drywell be installed at the site to mitigate drainage conditions; and

WHEREAS, the Midland Beach Civic Association provided written testimony in support of the application on condition that a drywell be installed to compensate for an ineffective drywell in the area; and

WHEREAS, the site is located at the southwest corner of Freeborn Street and Midland Avenue, within an R3-1 zoning district; and

WHEREAS, the site is rectangular, with a width of 60 feet, a depth of 87 feet, and a lot area of approximately 5,220 sq. ft.; and

WHEREAS, the site was formerly two lots – Lot 29 and Lot 27 – which were merged in 2008; the site was formerly occupied by a two-story single-family home, which was demolished in 2004; the entire site is currently vacant; and

WHEREAS, the applicant now proposes to construct a one-story building with a floor area of 2,100 sq. ft. to be occupied by a commercial (Use Group 6) use, which is not permitted as of right in the subject R3-1 zoning district; and

WHEREAS, accordingly, the applicant seeks a use variance pursuant to ZR § 72-21; and

WHEREAS, the Board notes that, although there are not any bulk regulations for a non-conforming use within a residential zoning district, the proposal does not comply with the parking requirement for a commercial district or the R3-1 yard requirements; and

WHEREAS, specifically, the applicant proposes five parking spaces (14 spaces would be required in a commercial district for such use) and the applicant proposes one front yard with a depth of 47 feet and one side yard with a width of five feet (two front yards, with depths of ten feet and 15'-0" and two side yards, with widths of five feet and 20'-0" are required for a corner lot within the subject zoning district); and

WHEREAS, the applicant asserts that the following are unique physical conditions that lead to practical difficulties in developing the subject site in strict compliance with underlying district regulations: (1) the proximity of Use Group 16 uses and the commercial nature of the subject block; (2) the shallow depth of the lot; (3) the traffic condition of Midland Avenue; and (4) the location at the border of an AE10 flood zone; and

WHEREAS, for reasons set forth below, the Board rejects that these physical conditions are unique or create any practical difficulties or unnecessary hardship in developing the site with a conforming use; and

WHEREAS, as to the nearby uses, the applicant asserts that it is surrounded by Use Group 16 uses and that the subject site is the only site along Midland Avenue with such a condition; and

WHEREAS, the Board notes that the site is a corner

lot, adjacent to a dry cleaning establishment to the west and a one-story home to the south; and

WHEREAS, the Board notes that there has not been any evidence submitted into the record to establish that the one-story dry cleaning establishment, which occupies a portion of a 2,568 sq. ft. lot is a Use Group 16, rather than Use Group 6 use (as defined in ZR § 32-15); in either case, though, Use Group 6 dry cleaning establishments, which are comparable in size to the adjacent business, are permitted within most commercial zoning districts, including commercial overlays within residential zoning districts, and are deemed compatible with residential use; and

WHEREAS, the Board notes that the confirmed Use Group 16 uses are either across Midland Avenue or Freeborn Street and are not adjacent to the site or even within the subject block; and

WHEREAS, further, the Board notes that the automotive storage facility across Midland Avenue (at 545 Midland Avenue) only has a curb cut and entrance on Freeborn Street and that the portion of the facility, which is across Midland Avenue from the site does not have any access points or fenestration and the operation is otherwise contained within the building and not visible from the subject site; and

WHEREAS, the other automotive facility across Midland Avenue is diagonal from the site with a small amount of frontage on Midland Avenue; and

WHEREAS, the automotive repair shop across Freeborn Street occupies a small site with a lot area of approximately 2,925 sq. ft. or a little more than half the lot area of the subject site; and

WHEREAS, the Board finds that the applicant's assertion that the noted uses constrain residential use is conclusory; and

WHEREAS, as to whether the location near to Use Group 16 uses is a unique condition, the Board notes that all of the noted Use Group 16 and other non-residential uses abut and are across the street from residential uses, many of which occupy smaller sites than the subject site; and

WHEREAS, further, the Board notes that there are at least four vacant sites within a 400-ft. radius of the site which have a narrower width than the subject site and which share a lot line with an automotive use, unlike the subject site, which is across the street from automotive uses; and

WHEREAS, accordingly, the assertion that the site is unique in its proximity to commercial and Use Group 16 uses is unavailing; and

WHEREAS, as to the purported commercial nature of the subject block, the Board notes that other than the four small commercial establishments with frontage on Midland Avenue, the subject block is occupied entirely by residential uses; there are 13 lots occupied by residential uses on the subject block; and

WHEREAS, Block 3802, to the west is occupied exclusively by residential uses and Block 3804 to the east is occupied exclusively by residential uses, except for the

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noted automotive repair shop; the three blocks across Midland Avenue are also occupied by a majority of residential uses; and

WHEREAS, the applicant's assertion that the subject block is almost exclusively developed with non-conforming uses is factually incorrect, based on the submitted land use map, which reflects a majority of sites and a majority of the lot area occupied by one- and two-story homes; and

WHEREAS, site visits and photographs submitted by the applicant confirm that there is a strong residential character in the area; and

WHEREAS, the Board also notes that the property directly adjoining the subject site to its south, and built nearly to the lot line is occupied by residential use, and that a substantial number of additional sites along Midland Avenue and the side streets are occupied by residential uses; and

WHEREAS, as to the depth of the lot, the applicant asserts that the lot, with a width of 60 feet along the Midland Avenue frontage and a depth of 87 feet along the Freeborn Street frontage is uniquely shallow; and

WHEREAS, specifically, the applicant asserts that a site plan with an orientation on Freeborn Street reflects a depth of 60 feet, which constrains residential development; and

WHEREAS, the Board notes that because the site is a regular rectangular corner lot with a lot area of 5,220 sq. ft., the applicant has two alternatives for orienting the homes on the site; the homes may either be oriented on Midland Avenue, where the width would be 60 feet and the depth 87 feet, or along Freeborn Street, where the width would be 87 feet and the depth 60 feet; and

WHEREAS, the Board notes that the applicant submitted two site plans, which each accommodate two habitable homes, one with the homes fronting on Midland Avenue and one with the homes fronting on Freeborn Street; and

WHEREAS, the Board notes that the applicant's site plan erroneously reflects that a rear yard with a depth of 30 feet is required from the Freeborn Street frontage; due to the corner lot condition, that rear yard is deemed a side yard with a required width of 20 feet, as provided; accordingly, the Board notes that the site can accommodate at least two complying residential alternatives and is thus not constrained by the lot dimensions; and

WHEREAS, specifically, the Board notes that there are four other lots within the subject block with depths equal to or shallower than 60 feet, on which 60 feet is the larger of the lots' two dimensions, and which have lot areas a fraction the size of the 5,220 sq. ft. subject lot; and

WHEREAS, additionally, the Board notes that the applicant has the alternative to orient the site plan so that the frontage is on Midland Avenue where the depth is 87 feet; a total of at least 17 lots within the 400-ft. radius of the site have a depth of 87 feet or shallower; and

WHEREAS, additionally, as to the overall impact of

the lot dimensions, the subject site with a lot area of 5,220 sq. ft. is larger than the average site within the radius and more regularly-shaped than the large number of long, narrow mid-block sites with widths in the 15 to 40-ft. range and depths of 100 feet and no alternative to re-orient the frontage; and

WHEREAS, the site also has a comparable lot area to the other corner lots in the radius; and

WHEREAS, the Board notes that the proposed alternatives for two complying semi-detached homes on the site, are able to accommodate the total amount of available floor area; and

WHEREAS, accordingly, the Board has determined that there is no evidence in the record that the depth of the lot, either along Freeborn Street or Midland Avenue constrains a conforming and complying development; and

WHEREAS, on the contrary, the Board notes that the majority of lots in the area, with narrow widths cannot accommodate more than one home; and

WHEREAS, as to the site's location, the applicant asserts that Midland Avenue is a heavily-trafficked arterial not suitable for residential use; and

WHEREAS, the Board rejects the applicant's assertion that Midland Avenue is a heavily-trafficked arterial; and

WHEREAS, Midland Avenue has a width of 80 feet, which includes sidewalks on both sides of the street, one lane of traffic in each direction, one bicycle lane in each direction, and one lane of curbside parking on each side of the street, which does not reach the threshold of a heavily-trafficked arterial; and

WHEREAS, the Board notes that roads within Staten Island that have been identified as heavily-trafficked arterials, which may constrain residential development, include Richmond Avenue, with a width of 150 feet and eight lanes of traffic and Hylan Boulevard, with a width of 100 feet and six lanes of traffic; and

WHEREAS, the Board notes that the applicant has failed to prove that the traffic on Midland Avenue rises to the level of uniqueness and that expanding the definition of uniqueness to include the location of a site on a street with two lanes of moving traffic in a city with innumerable such streets is contrary to the definition of what is unique; and

WHEREAS, the Board notes that there are at least two sites on Midland Avenue, within one block of the site, which have been recently developed with homes; and

WHEREAS, additionally, the Board notes that the site also has 87 feet of frontage on Freeborn Street, which is a one-way street, with a width of 50 feet, and parking on both sides of the street; and

WHEREAS, accordingly, the Board rejects the applicant's argument that the location on Midland Avenue is a unique condition resulting in a hardship; and

WHEREAS, as to the location within an AE10 flood zone, the Board notes that, as reflected in the as of right scenarios, any potential restrictions on the ability to occupy the first floor of a proposed building with residential use

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does not inhibit the development of two habitable semi-detached three-story homes; and

WHEREAS, the Board also rejects the assertion that location in the flood zone is a unique condition which creates a hardship in developing the site with a conforming use; and

WHEREAS, the applicant cites to four prior Board grants for nearby sites in support of the argument that the Board has accepted that certain of the noted conditions form the basis of a unique physical condition that leads to practical difficulty or unnecessary hardship; these cases are BSA Cal. Nos. 435-74-BZ, 289-79-BZ/290-79-BZ, and 46-93-BZ; and

WHEREAS, a careful reading of these resolutions reveals that the applicant's reliance on these particular grants is misplaced, as, although each site is in close proximity, they can all be distinguished; and

WHEREAS, as to BSA Cal. No. 435-74-BZ (552 Midland Avenue), the Board notes that the application was for the reconstruction of an automotive service station at the site, which was a pre-existing non-conforming use; and

WHEREAS, the Board notes that, in addition to the prior existence of the use, the subject site in BSA Cal. No. 435-74-BZ has a width of 45 feet and a depth of 65 feet, which amounts to a lot area of a little more than half that of the subject site (546 Midland Avenue); and

WHEREAS, the Board notes that it granted the applicant's request to reopen the record so that the applicant could submit the site plan associated with a proposed conforming development at 552 Midland Avenue (435-74-BZ); the Board does not find the site plan to be relevant to the subject application; and

WHEREAS, specifically, the Board notes that because the subject site has a lot area that is approximately 44 percent larger than 552 Midland Avenue, the subject site can accommodate two semi-detached homes with widths of 18'-6" each, with a substantial amount of open space, including two front yards with depths of 15'-0" and 11'-6", and two side yards with widths of 30'-0" and 11'-6"; and

WHEREAS, in contrast, the as of right plan associated with the smaller 552 Midland Avenue reflects two semi-detached homes with widths of 13'-6" each, two front yards with depths of 15'-0" and 10'-0", and two side yards with widths of 3'-0", and 8'-0"; and

WHEREAS, in addition to the other distinctions of 552 Midland Avenue, namely that at the time of the grant, it was occupied by a pre-existing non-conforming use and was enlarged per the Board's grant, the 552 Midland Avenue site is significantly more constrained for residential development, due to its lot size, which results in smaller, less desirable homes and would require two side yard waivers; and

WHEREAS, accordingly, if anything, the alternate site plan for 552 Midland Avenue demonstrates that the subject site can accommodate more sizeable homes with more open space, which do not require any bulk waivers; and

WHEREAS, as to BSA Cal. No. 289-79-BZ and its companion case BSA Cal. No. 290-79-BZ (respectively, 547 and 551 Midland Avenue), the Board notes that there was a pre-existing non-conforming use at 551 Midland Avenue and, as reflected on the 1959 certificate of occupancy and in the Board's decision, that the use at 547 Midland Avenue is a fully enclosed automotive storage building restricted to accessory use to the pre-existing non-conforming garage at 551 Midland Avenue, directly across Freeborn Street; and

WHEREAS, as to BSA Cal. No. 46-93-BZ (530 Midland Avenue), the Board notes that there are at least three distinctions to be made; the differences include the following: (1) the site is midblock and has a narrower width of 40 feet and a lot area that is smaller by approximately 1,000 sq. ft.; (2) because of the site's midblock location, narrower width, and yard requirements, two homes could not be feasibly accommodated at the site; and (3) the site is directly between two pre-existing non-conforming commercial uses; and

WHEREAS, the Board therefore, is not persuaded that the site's (1) location opposite automotive uses and adjacent to a dry cleaning establishment; (2) depth of 60 feet along Freeborn Avenue or 87 feet along Midland Avenue; (3) location on the corner of Midland Avenue and Freeborn Street; (4) location within an AE10 flood zone; and (5) perceived similarities with nearby sites do not constitute unique physical conditions that create a practical difficulty or unnecessary hardship in constructing a complying building to be occupied by a conforming use; and

WHEREAS, the Board still requires proof of actual unique physical features present at the site which cause practical difficulties or unnecessary hardship; and

WHEREAS, for all of 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, because the applicant has failed to establish that any of the purported site conditions are unique or constrain a conforming development on the site, the Board rejects the argument that these conditions create an inability to realize a reasonable return; and

WHEREAS, the Board notes that the applicant's financial analysis relies on the noted conditions as hardships which constrain the economic feasibility of conforming residential development and, in the absence of any nexus between the conditions and the purported hardship, the Board finds that the applicant relies on the general economic market condition in the surrounding area, which is a condition shared by all sites, many of which are much smaller than the subject site; and

WHEREAS, further, the applicant has provided a site plan, which reflects that two three-story single-family homes could be accommodated on the site, a more favorable result than what could be achieved on the majority of lots in the 400-ft. radius; and

WHEREAS, thus, the application also fails to meet the finding set forth at ZR §72-21(b); and

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WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) and (b), 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) and (b), which are threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated August 25, 2008, acting on Department of Buildings Application No. 510051523, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, September 22, 2009.

166-09-BZ

CEQR #09-BSA-108K

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

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area, height and setback and permitted obstruction in rear yard regulations (§43-12, §43-43, §43-23(b)). M1-1 District.

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

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Stuart Beckerman.

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 Commissioner, dated April 7, 2009, acting on Department of Buildings Application No. 310036243, reads in pertinent part:

“The proposed enlargement of a legal conforming commercial and manufacturing use located in an M1-1 zoning district is contrary to bulk provisions of ZR Article IV, Chapter 3:

1. Proposed floor area contrary to ZR 43-12
2. Proposed height of building contrary to ZR 43-43
3. Proposed permitted obstruction in rear yard contrary to ZR 43-23(b) and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-53 of the Zoning Resolution;” and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to allow, within an M1-1 zoning district, the proposed enlargement of a conforming Use Group 16D and Use Group 17B warehouse and manufacturing building, which does not comply with requirements related to floor area, height, setback, and rear yard encroachment, contrary to ZR §§ 43-12, 43-43 and 43-23(b); and

WHEREAS, a public hearing was held on this application on August 25, 2009 after due notice by publication in *The City Record*, and then to decision on September 22, 2009; and

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

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

WHEREAS, the Mayor’s Office of Industrial & Manufacturing Businesses provided written testimony in support of this application; and

WHEREAS, the subject site is located on the northeast corner of McGuinness Boulevard and Freeman Street, in an M1-1 zoning district within the North Brooklyn Industrial Business Zone; and

WHEREAS, the site has a lot area of 13,092 sq. ft. and is occupied by a 16,592 sq. ft. (1.27 FAR) one- and two-story warehouse and manufacturing building; and

WHEREAS, the site consists of four tax lots (Lots 2, 4, 5 and 52) which were merged into a single zoning lot, pursuant to Department of Buildings (“DOB”) approval; and

WHEREAS, the applicant states that the owner has owned Lots 2 and 4 (the “Original Zoning Lot”) since 1918 and acquired Lots 5 and 52 in 2002 and 2004, respectively; and

WHEREAS, the Original Zoning Lot had a lot area of 8,250 sq. ft. and was occupied by a one- and two-story warehouse and manufacturing building with a floor area of 11,750 sq. ft.; Lot 5 is occupied by a warehouse and Lot 52 was formerly occupied by a home; and

WHEREAS, the applicant states that in 2006 DOB approved plans to add Lot 5 to the subject zoning lot and permitted an increase of the floor area on Lot 5, pursuant to ZR § 43-121; and

WHEREAS, the applicant further states that the plans were amended in 2008 to add Lot 52 to the zoning lot and permit an increase of the floor area on Lot 52, pursuant to ZR § 43-121; and

WHEREAS, the applicant states that the application permitting an increase in the floor area of Lots 5 and 52 pursuant to ZR § 43-121 has been withdrawn, and the subject proposal is analyzed within the context of the subject special permit; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 73-53, to address the following non-complying conditions associated with the current proposal:

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an FAR of 1.27 (the maximum FAR is 1.0); a wall height of 75'-0" (the maximum wall height is 30'-0"); no setback (a setback of 15'-0" is required after a height of 30'-0"); and a portion of a one-story building in the rear yard with a height of 30'-0" (the maximum height of a permitted obstruction in the rear yard is 23'-0"); and

WHEREAS, as to the prerequisites listed in ZR § 73-53(a), the applicant states that the existing and proposed Use Group 16D and Use Group 17B warehouse and manufacturing uses conform to the use regulations of the M1-1 zoning district, and therefore the uses are not subject to termination pursuant to ZR § 52-70; and

WHEREAS, in accordance with ZR § 73-53(a)(2), the applicant demonstrated that the subject use for which the special permit is being sought has been lawfully located on the zoning lot on which the expansion is to occur, or a portion thereof, for five years or more; and

WHEREAS, in support of this finding, the applicant states that the owner's business has been lawfully located on the Original Zoning Lot since 1918, and the applicant submitted a certificate of occupancy, utility bills, and corresponding checks from the owner evidencing that the subject use has been lawfully located on the zoning lot for more than five years; and

WHEREAS, ZR § 73-53(a)(3) requires that the building in which such use is located must not have been previously enlarged pursuant to ZR §§ 11-412, 43-121 or 72-21; and

WHEREAS, the applicant states that, as discussed above, the portion of the proposed enlargement located on Lots 5 and 52 was approved pursuant to ZR § 43-121; however, the application for that work has been withdrawn; and

WHEREAS, the applicant submitted a Pre-Consideration from DOB, dated December 11, 2008, confirming that the subject proposal satisfies ZR § 73-53(a)(3), and is therefore eligible for the subject special permit; and

WHEREAS, the applicant states that, in accordance with the requirement of ZR § 73-53(a)(4), the subject uses are listed in Use Group 16D and Use Group 17B, not Use Group 18; and

WHEREAS, pursuant to ZR § 73-53(b)(1), the permitted enlargement is limited to the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or a 2,500 sq. ft. increase in the floor area occupied by the use on December 17, 1987, and in no event shall exceed a 10,000 sq. ft. increase in the floor area occupied on that date; and

WHEREAS, the applicant has demonstrated that the requested proposal is for a 4,842 sq. ft. enlargement, which amounts to less than 45 percent of the 11,750 sq. ft. of floor area occupied by the use on December 17, 1987, and does not exceed 10,000 square feet; therefore, the proposed enlargement meets the requirements of ZR § 73-53(b)(1); and

WHEREAS, the applicant represents that pursuant to ZR § 73-53(b)(2), the enlargement is an entirely enclosed building, and there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that that the requirements set forth at ZR § 73-53(b)(3),(4),(5),(6),(7),(8), and (9) are either satisfied, or are inapplicable to the instant application; and

WHEREAS, as to the finding under ZR § 73-53(c)(1), the applicant states that the enlargement will not generate significant increases in vehicular or pedestrian traffic nor cause congestion in the surrounding area, but will rather decrease such traffic and congestion; and

WHEREAS, the applicant states that the proposed enlargement is necessary to accommodate stacking equipment that will increase the efficiency of storage and other operations; and

WHEREAS, the applicant represents that currently, space constraints force the owner to receive items in less than full truckload quantities, and having the ability to store more raw and finished product will enable the owner to receive larger deliveries, thereby reducing the number and frequency of truck deliveries at the site; and

WHEREAS, as to potential parking impacts, the applicant states that the proposed enlargement provides the three required accessory off-street parking spaces, which will be adequate to accommodate any vehicles generated by the enlargement, as required under ZR § 73-53(c)(2); and

WHEREAS, the Board notes that ZR § 73-53(c)(3) and (4) are inapplicable to the subject proposal, as there are no required side yards and that there is no open parking or loading on the premises; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant notes that the proposed enlargement will be constructed entirely within the subject M1-1 zoning district, and the existing and proposed uses are consistent with the industrial character of the surrounding area; and

WHEREAS, the applicant states that the proposed FAR of 1.27 is less than the FAR of 1.5 which would be allowed as-of-right pursuant to ZR § 43-121; and

WHEREAS, the applicant further states that the street wall and bulk are compatible with the character of the surrounding area for the following reasons: (1) the building's total height of 75 feet would be permitted with an appropriate setback; (2) McGuinness Boulevard is a wide divided boulevard with a range of widths from 160 to 180 feet; (3) the block is at the beginning of the Pulaski Bridge approach ramp; and (4) the subject section of McGuinness Boulevard is characterized by significant commercial truck traffic; and

WHEREAS, as to the rear yard encroachment, the applicant states that such an encroachment is permitted with full lot coverage up to a height of 23 feet, and the additional seven feet of height proposed by the applicant will have a minimal impact on the surrounding area; and

WHEREAS, the applicant further states that the impact

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of the rear yard encroachment will be minimal because the adjacent lot to the east is occupied by an open storage yard, the adjacent lots to the north are occupied by non-conforming homes located more than 50 feet from the rear lot line of the premises, the only access points to the site are from McGuinness Boulevard and Freeman Street, and the rear yard encroachment is fully enclosed with no windows; and

WHEREAS, the applicant notes that the premises is located in an M1-1 zoning district within the North Brooklyn Industrial Business Zone, which is an area designated by the Mayor's Office of Industrial and Manufacturing Businesses as one of the most productive manufacturing zones in the City and therefore worthy of special protections; and

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

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of viable Use Group 16D and Use Group 17B uses, which provide jobs and tax revenue, on a site where such use is appropriate and legal; 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 are outweighed by the advantages to be derived by the community; and

WHEREAS, at hearing, the Board questioned whether the proposed wall height of 75 feet could be reduced; and

WHEREAS, in response, the applicant states that the proposed height is necessary for the business to remain at its current location, as the height will accommodate an automated sheet storage system capable of storing a large quantity of flat sheet in a small area by raising the ceiling height, thereby opening up much needed warehouse space for other operations, including material processing, sheet manufacturing, order picking and packing, and truck loading and unloading; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03.

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. 09-BSA-108K, dated April 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, 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 §§ 73-53 and 73-03 for a special permit to allow, within an M1-1 zoning district, the proposed enlargement of a conforming Use Group 16D and Use Group 17B warehouse and manufacturing building, which does not comply with requirements related to floor area, height, setback, and rear yard encroachment, contrary to ZR §§ 43-12, 43-43 and 43-23(b), *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received August 5, 2009"-(5) sheets and "August 13, 2009"-(1) sheet; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT there shall be no open uses on the site;

THAT the above conditions shall appear on any issued certificate of occupancy;

THAT substantial construction shall be completed pursuant to 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 other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals September 22, 2009.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new four-story residential building containing four dwelling units, contrary to use

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regulations (§42-10). M1-1 zoning district.
PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 10, 2009 at 1:30 P.M., for deferred decision.

97-08-BZ

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

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

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

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

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 residence, contrary to floor area and open space (§23-141); required front yard (§23-45), rear yard (§23-47), side yard (§23-46) and off street parking (§25-622) regulations. 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

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Michael Scagnelli.

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

314-08-BZ

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

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning 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 October 27, 2009, at 1:30 P.M., for an adjourned hearing.

37-09-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to October 20, 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 (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

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

COMMUNITY BOARD #18M

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO REOPEN HEARING –

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

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

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, contrary to side yard

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requirements (§461). 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

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for decision, hearing closed.

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 and Frank Sellitto.

For Opposition: Meville Thorne.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

54-09-BZ

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

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

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

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Juan Reyes III.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October

20, 2009, at 1:30 P.M., for decision, hearing closed.

56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.

SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment. R3X zoning district.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

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

214-07-BZ

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

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

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

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith and John Becker.

For Administration: Assemblyman Jeffrey Dinowitz, Manuel Delgado, Benjamin Greif and Zulmu Montanez.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for continued hearing.

28-09-BZ

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

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

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

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moishe Friedman.

For Opposition: Sue Ellen Levy and Raphael Davon.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

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214-09-BZ

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

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

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

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Councilmember Jame Vacca, Joseph A. McManus, John Doyle, Sal Gasteriun Anjali Kochar, Frank Ficabasso, Desmond A. Philip, Michael Franco, Dr. Peppino Bonelli, Dufinn Franco, Anthony J. Bellitto, Xueliang Su, Karen Evangeliou, Edith Shope, Rosalinda Nardone, Mike Franco, Wanda Bennett and Kamleon Bogga.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.