
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. 47

December 7, 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

DOCKET737/738

CALENDAR of December 15, 2009

Morning739

Afternoon740

CONTENTS

MINUTES of Regular Meetings, Tuesday, November 24, 2009

Morning Calendar741

Affecting Calendar Numbers:

728-29-BZ	154-04 Horace Harding, Queens
467-58-BZ	172-11 Northern Boulevard, Queens
60-82-BZ	60-11 Queens Boulevard, Queens
149-01-BZ	88 Jane Street, Manhattan
389-37-BZ	31-08 - 31-12 45 th Street, Queens
389-85-BZ	2090 Bronxdale Avenue, Bronx
140-92-BZ	39-21 Crescent Street, Queens
5-96-BZ	564/92 St. John Place, Brooklyn
68-03-BZ	649 39 th Street, Brooklyn
326-04-BZ	6208-6216 Strickland Avenue, Brooklyn
197-05-BZ	813/815 Broadway, Manhattan
228-09-A & 229-09-A	37-45 and 37-47 98 th Street, Queens
147-08-BZY	95-04 Allendale Street, Queens
315-08-A	246 Spring Street, Manhattan
170-09-A	24-03 Queens Plaza North, Queens
244-09-BZY	175 Vanderbilt Avenue, Brooklyn
245-09-BZY	120 Adelphi Street, Brooklyn
301-09-BZY	539 59 th Street, Brooklyn

Afternoon Calendar749

Affecting Calendar Numbers:

260-08-BZ	148 Oxford Street, Brooklyn
314-08-BZ	437-447 West 13 th Street, Manhattan
23-09-BZ	114 Amherst Street, Brooklyn
214-07-BZ	3217 Irwin Avenue, Bronx
187-08-BZ	1247 38 th Street, Brooklyn
43-09-BZ	198 Varet Street, Brooklyn
164-09-BZ	124 Irwin Street, Brooklyn
180-09-BZ	1735 Richmond Avenue, Staten Island
218-09-BZ	57 Empire Boulevard, Brooklyn
224-09-BZ	218-51 aka 218-59 Hempstead Avenue, Queens
246-09-BZ	636 Louisiana Avenue, Brooklyn
247-09-BZ	123 East 55 th Street, Manhattan
250-09-BZ	532 Madison Avenue, Manhattan

DOCKET

New Case Filed Up to November 24, 2009

308-09-BZ

366 Husson Street, Corner between Husson Street & Bedford Avenue, Block 3575, Lot(s) 24, Borough of **Staten Island, Community Board: 2**. Variance to legalize in ground pool and parking, contrary to use regulations. R3X district.

309-09-BZ

2173 65th Street, Between Bay Parkway and 21st Avenue., Block 5550, Lot(s) 40, Borough of **Brooklyn, Community Board: 11**. Variance to allow a mixed use building, contrary to use regulations. C2-3 & R6A district.

310-09-A

14 State Road, North side of Rockaway Point Boulevard, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Section 35, Article of the General City Law. R4 district.

311-09-BZ

1092 East 22nd Street, Between Avenue J and Avenue K., Block 7603, Lot(s) 54, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a three-story dwelling. R-2 district.

312-09-A

291 Union Street, Eastern portion, block bounded by Court, Union, Sackett and clinton Streets., Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2, R6B district.

313-09-A

298 Sackett Street, Eastern portion, block bounded by Court, Union, Sackett and clinton Streets., Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2, R6B district.

314-09-A

296A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

315-09-A

296 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

316-09-A

294A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

317-09-A

294 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

318-09-A

292A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

319-09-A

292 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

320-09-A

289 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

DOCKET

321-09-A

287 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

322-09-A

285 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

323-09-A

283 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B 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

DECEMBER 15, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 15, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (Exxon) which expired on January 22, 2009. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, north side of Horace Harding Expressway between Kissena Boulevard and 154th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate management offices (UG6) in a residential district which expires on July 25, 2010. This application also proposes to change within the same UG6 office use. R-5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a seventeen story mixed-use commercial/community facility/residential condominium building which expired on December 13, 2009. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince street and Farrington street, Block 4958, Lot 38 & 48, Borough of Queens.

COMMUNITY BOARD #7Q

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Application to extend the term and amend the prior granted variance to add an additional floor and increase the number of dwelling units, FAR, and the number of parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Reopening for an amendment of the existing public parking garage. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

205-05-A

APPLICANT – Gary D Lenhart, for The Breezy Point Cooperative, Inc., owner; Sheila Cardinale, lessee.

SUBJECT – Application September 1, 2009 – Amendment of to a previously granted General City Law Section 35 waiver to permit the construction of a single family home within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, approximately 60' west of mapped Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

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.

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

COMMUNITY BOARD #15BK

291-09-A

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

SUBJECT – Application October 13, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City law Section 36 and the proposed upgrade of the existing legal nonconforming private disposal system located partially in the bed of the service road is contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 33 Queens Walk, east side of Queens Walk, 115' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

DECEMBER 15, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 15, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

302-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance to permit an existing semi-detached residential building contrary to side yard regulations (ZR §23-462) R5 district.

PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

COMMUNITY BOARD #12BX

309-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 147th Avenue Building Corporation, owner.

SUBJECT – Application December 19, 2008 – Variance (§72-21) for the construction of a three story, two-family home on a vacant corner lot contrary to front yards (§23-45) and floor area (§23-141). R4-1 zoning district.

PREMISES AFFECTED – 1717 Pitman Avenue, northwest corner of intersection of Digney Avenue and Pitman Avenue, Block 5049, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #12BX

239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a 6 story community facility building (NYU Center for Academic and Spiritual Life) contrary to lot coverage (ZR §24-11) and height and setback regulations (ZR §24-522, §33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

253-09-BZ

APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless telecommunications facility on roof of existing building. R4 zoning district.

PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.

COMMUNITY BOARD # 5Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, NOVEMBER 24, 2009 10:00 A.M.

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

SPECIAL ORDER CALENDAR

728-29-BZ

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

SUBJECT – Application August 31, 2009 – Extension of Term for the continued use of a gasoline service station (*Mobil*) which expires on March 19, 2010. R4 zoning district.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, bounded easterly by Kissena Boulevard, northerly by Horace Harding Expressway and southerly by 64th Street, Block 6744, Lot 71, Borough of Queens.

COMMUNITY BOARD #8Q

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 amendment seeking an extension of term for the continued use of a gasoline service station, which expires on March 19, 2010; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, and then to decision on November 24, 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 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of the Horace Harding Expressway at the corner formed by the Horace Harding Expressway and Kissena Boulevard, in an R4 zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance to permit the construction and operation of a gasoline service station on the site; and

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

WHEREAS, on May 15, 2001, the Board granted an extension of term for a period of ten years, to expire on March 19, 2010, with a condition that a certificate of occupancy be obtained by May 25, 2003; and

WHEREAS, on July 29, 2008, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant has submitted a new certificate of occupancy; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 15, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 19, 2010, to expire on March 19, 2020; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of this grant shall expire on March 19, 2020;

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

THAT a new certificate of occupancy shall be obtained by May 24, 2010;

THAT all conditions from the prior resolution 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. 410058663)

Adopted by the Board of Standards and Appeals November 24, 2009.

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application September 14, 2009 – Extension of Term for the continued operation of a Gasoline Service Station (*Mobil*) which expires on December 4, 2009. R3-2 zoning district.

PREMISES AFFECTED – 172-11 Northern Boulevard, northside blockfront between 172nd Street & Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

MINUTES

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 term for the continued use of a gasoline service station, which expires on December 4, 2009; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, and then to decision on November 24, 2009; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) all shrubs and planters must be replaced and maintained as per the BSA-approved plans; (2) the garbage shed door must be fixed and remain closed at all times; (3) the used tires near the building must be removed; and (4) all accessories must be stored inside the building; and

WHEREAS, Council Member Tony Avella recommends approval of this application, subject to the same conditions as the Community Board; and

WHEREAS, the site is located on the north side of Northern Boulevard between 172nd Street and Utopia Parkway, in an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1958 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station; and

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

WHEREAS, most recently, the grant was extended on August 19, 2008 for a term of ten years from the expiration of the prior grant, to expire on December 4, 2009; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, as to the concerns raised by the Community Board, the applicant states that it will comply with all of the Community Board's conditions; and

WHEREAS, the applicant submitted photographs reflecting that: (1) all required shrubbery has been planted; (2) the gate for the garbage enclosure remains closed except for limited access for collection and removal; and (3) all tires and accessories are stored inside the service building; and

WHEREAS, further, the applicant states that the west elevation of the service building has been uniformly painted and that the owner is in the process of selecting a contractor to perform work involving the replacement of concrete flags in the sidewalks and the painting of directional arrows to direct traffic on the site; and

WHEREAS, the applicant also seeks to legalize the existing dimensions of the curb cuts on the site, which do not comply with the previously-approved plans; and

WHEREAS, specifically, the curb cut located on Northern Boulevard near the 172nd Street intersection is 23'-0" instead of 20'-0", the curb cut located on Northern Boulevard near the Utopia Parkway intersection is 19'-0" instead of 23'-0", and the curb cut located on 172nd Street is 33'-0" instead of 30'-0"; and

WHEREAS, the applicant states that the Department of Buildings approved its curb cut application; and

WHEREAS, the Board has determined that the proposed curb cuts are appropriate; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 16, 1958, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 4, 2009, to expire on December 4, 2019; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received September 14, 2009"-(6) sheets; and *on further condition*:

THAT the term of the grant shall expire on December 4, 2019;

THAT landscaping shall be maintained as shown on the BSA-approved plans;

THAT there shall be no exterior storage on the site;

THAT the gate for the garbage enclosure shall be maintained and shall remain closed except for limited access for collection and removal;

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

THAT a new certificate of occupancy shall be obtained by May 24, 2010;

THAT all conditions from prior resolution 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. 420074109)

Adopted by the Board of Standards and Appeals
November 24, 2009.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (*BP North America*) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

MINUTES

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on December 13, 2007; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on November 24, 2009; and

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

WHEREAS, the site is located on a block bounded by 60th Street, 61st Street, 44th Avenue, and Queens Boulevard, within a C2-3 (R7X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1952 when, under BSA Cal. No. 570-52-BZ, the Board granted a variance for the alteration of an existing gasoline service station with accessory uses; and

WHEREAS, on July 7, 1982, under the subject calendar number, the Board amended the grant to permit the reconstruction of the service station and the elimination of automotive repairs at the site; and

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

WHEREAS, most recently, on March 13, 2007, the Board granted a ten-year extension of the term from July 7, 2006, to expire July 7, 2016; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by December 13, 2007; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to an administrative oversight; and

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

WHEREAS, at hearing, the Board questioned whether the fence around the site was repaired and shrubs were planted in accordance with the previous grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that the fence has been repaired and the shrubs have been planted in accordance with the previous grant; and

WHEREAS, based upon its review of the record, the Board finds that the requested 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 7, 1982, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to November 24, 2011; *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 November 24, 2011;

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. 402380071)

Adopted by the Board of Standards and Appeals November 24, 2009.

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 – Application dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to the resolution for a variance for the conversion of a six-story building to residential use; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in

MINUTES

The City Record, with continued hearings on September 22, 2009, and November 10, 2009, and then to decision on November 24, 2009; and

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

WHEREAS, Community Board 2, Manhattan, recommends disapproval of this application because it objects to the applicant's proposal to eliminate a subsidized apartment for a senior citizen in the building; and

WHEREAS, on June 18, 2002, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R6 zoning district the conversion of community facility space on the cellar level and first floor of an existing six-story building to additional residential dwelling units and recreation space; the Board also granted a companion case, under BSA Cal. No. 150-01-A, to allow for certain waivers to Multiple Dwelling Law § 310; and

WHEREAS, on September 19, 2006, the Board granted an extension of term to obtain a certificate of occupancy to expire on September 19, 2007; and

WHEREAS, the applicant represents that all construction has been completed and DOB has issued a certificate of occupancy; and

WHEREAS, the applicant states that the certificate of occupancy identifies dwelling unit A as a subsidized unit; and

WHEREAS, the applicant now seeks to have the Board remove the language in the 2006 Board resolution, which references a purported agreement between the applicant and the Community Board regarding the provision of one subsidized unit to a senior citizen for a period of ten years; and

WHEREAS, the language, within the body of the resolution, includes the following:

“additionally, at the time of the original grant, the applicant volunteered to restrict, for a term of ten years, the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate . . . the applicant agreed to provide documentation of the occupancy;” and

WHEREAS, during the hearing process, the Board stated that the applicant misapprehended the resolution and the noted language, within the body of the decision, is not identified as a condition of the approval; and

WHEREAS, thus, the Board did not act beyond its purview or condition its approval on the purported agreement with the Community Board, but rather noted the agreement in the resolution as the applicant and Community Board discussed it during the hearing process associated with the 2006 approval; and

WHEREAS, the Board does not take any position as to the enforceability of the purported agreement between the applicant and the Community Board; and

WHEREAS, accordingly, because the noted discussion was not a condition of the Board's approval, the Board has determined that the applicant has not requested a substantive modification to the approval, requiring the Board's action, and thus the request must be dismissed.

Therefore it is Resolved that the application filed under BSA Cal. No. 149-01-BZ is hereby dismissed.

Adopted by the Board of Standards and Appeals, November 24, 2009.

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 -31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for ExxonMobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application October 5, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Automotive Service Station (*Mobil*) which expires on December 9, 2009. C2-3/R7-1 zoning district.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, Block 4283, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #11BX

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District).

PREMISES AFFECTED – 39-21 Crescent Street, southerly

MINUTES

side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

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

5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ulltra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998.

R7-1 zoning district.

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

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

68-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Torah M. Sinai, Incorporated, owner.

SUBJECT – Application October 20, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the conversion of an existing manufacturing building to a (UG3) day care center and (UG6) office use which expired on August 10, 2008 and a Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 649 39th Street, northwest corner of the intersection of 39th street and 7th Avenue, Block 903, Lot 79, 80, 83, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

326-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Center of Mill Basin, owner.

SUBJECT – Application October 29, 2009 – Extension of Time to Complete Construction of a previously granted

Variance (§72-21) for the construction of a new Synagogue (*Sephardic Center of Mill Basin*) which expired on October 18, 2009. R-2 zoning district.

PREMISES AFFECTED – 6208-6216 Strickland Avenue, northeast corner of the intersection of Strickland Avenue and Mill Avenue, Block 8656, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 15, 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 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. C6-1 zoning district.

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.

THE VOTE TO REOPEN HEARING –

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

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

228-09-A & 229-09-A

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 37-45 and 37-47 98th Street, east side of 98th Street, Block 1761, Lots 48 and 49, Borough of Queens.

MINUTES

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jordan Most.

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 appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on two four-story residential buildings under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 10, 2009, and then to decision on November 24, 2009; and

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

WHEREAS, Community Board 3, Queens, recommends disapproval of the application; and

WHEREAS, the site is located on the east side of 98th Street, between 37th Avenue and 38th Avenue and has a lot area of 5,000 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two four-story residential buildings, each with seven dwelling units, 4,960 sq. ft. of floor area (1.98 FAR), a wall height of 39'-5", a total height of 43'-9", no side yards, and no parking spaces (the "Buildings"); and

WHEREAS, the Board notes that the Buildings are being constructed simultaneously, on a single foundation; and

WHEREAS, the subject site is currently located within an R5A zoning district, but was formerly located within an R6B zoning district; and

WHEREAS, the Buildings comply with the former R6B zoning district parameters; specifically with respect to floor area, FAR, number of units, height, setbacks, side yards, and number of parking spaces; and

WHEREAS, however, on March 24, 2009 (the "Enactment Date"), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to R5A, as noted above; and

WHEREAS, the Buildings do not comply with the R5A zoning district parameters as to floor area, FAR, number of units, height, setbacks, side yards, and number of parking spaces; and

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

WHEREAS, the Board notes that New Building Permit Nos. 410063247-01-NB and 410063238-01-NB (the "New Building Permits"), which authorized the development of two four-story residential building pursuant to R6B zoning district regulations were issued on October 31, 2008 and November

26, 2008, respectively; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5A zoning district regulations and the Department of Buildings ("DOB") determined that the Buildings' foundation was not complete; and

WHEREAS, by letter dated September 8, 2009, DOB stated that New Building Permit No. 410063238 was lawfully issued, authorizing construction of the building prior to the Enactment Date; and

WHEREAS, on August 19, 2009, DOB conducted an audit of New Building Permit No. 410063247 and issued a notice of intent to revoke the permit ("Letter of Intent") on August 26, 2009; and

WHEREAS, on September 29, 2009, DOB rescinded the Letter of Intent, noting that the applicant had resolved all of DOB's objections; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (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, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), 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, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "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 owner had completed the following: 100 percent of shoring work, 40 percent of excavation work, and the pouring of 46 cubic yards of concrete, or 36 percent of the concrete required for the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed prior to the Enactment Date, concrete pour tickets, a construction log, affidavits from the contractor and architect, and copies of cancelled checks; and

MINUTES

WHEREAS, initially the applicant included an additional 12 cubic yards of concrete that were poured on the Enactment Date, however, due to a question as to the timeliness of the pour, the Board directed the applicant to remove the 12 cubic yards of concrete from its calculations; and

WHEREAS, at hearing, the Board requested that the applicant provide an affidavit from the contractor stating the amount of work completed; and

WHEREAS, in response, the applicant submitted affidavits from the general contractor and architect which confirm that 100 percent of shoring was completed, 100 percent of the rakers were installed, and that 36 percent of the concrete required for the foundation had been poured; and

WHEREAS, the general contractor also stated that approximately 49 percent of the foundation has been completed; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; 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 this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$134,279, including hard and soft costs and irrevocable commitments, out of \$1,198,193 budgeted for the entire project; and

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

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$117,975 for excavation, shoring, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$16,304 in connection with costs committed to the development under irrevocable contracts prior to the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 11 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the 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 loss of approximately \$134,279 associated with pre-Enactment Date project costs that would result if vesting were not permitted is significant; and

WHEREAS, 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, but in the instant application, the determination was also grounded on the applicant's discussion of the decreased level of return for the project if the limitations of the new zoning were imposed; and

WHEREAS, specifically, the applicant notes that the permitted floor area would decrease from 9,920 sq. ft. (2.0 FAR) to 5,500 sq. ft. (1.1 FAR) between the two buildings; and

WHEREAS, the applicant states that the 4,420 sq. ft. loss in floor area represents a 45 percent decrease in the buildable FAR on the site; and

WHEREAS, the applicant notes that the permitted number of dwelling units would decrease from a total of 14 units under the prior zoning district to two units under the new zoning district; and

WHEREAS, the applicant states that the rezoning would result in a 77 percent decrease in the annual rental income for the proposed development, from \$180,000 to \$42,000; and

WHEREAS, the Board agrees that the reduction in the number of units within the Buildings and the diminution in value of those units because of the need to redesign, coupled with \$134,279 of actual expenditures that could not be recouped, constitutes 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 of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 410063247-01-NB and 410063238-01-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 for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, November 24, 2009.

147-08-BZY

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

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

MINUTES

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

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for an adjourned hearing.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Mark Davis, DOB; Paul Selver.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

170-09-A

APPLICANT – NYC Department of Buildings

OWNER – Kenbridge Realty Corporation

SUBJECT – Application April 3, 2009 – An appeal filed by the Department of Buildings seeking to amend Certificate of Occupancy to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use District.

PREMISES AFFECTED – 24-03 Queens Plaza North, northeast corner of Queens Plaza North and 24th Street, Block 414, Lot 5, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Lisa Orrantia

For Opposition: 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 December 15, 2009, at 10 A.M., for decision, hearing closed.

244-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Polven, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/C1-3 zoning district. R6B/C2-4 Zoning District.

PREMISES AFFECTED – 175 Vanderbilt Avenue, east side of Vanderbilt Avenue and Myrtle Avenue, Block 1901, Lots 19, 20, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

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

245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R6B Zoning District.

PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252' north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and A. Calvo.

For Opposition: Enid Braun and Scott Oliver.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

301-09-BZY

APPLICANT – Nelson A. Padilla, for Nelson A. Padilla, owner.

SUBJECT – Application October 29, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced prior to the text amendment on September 30, 2009. R6B Zoning district.

PREMISES AFFECTED – 539 59th Street, 320' north from 5th Avenue, Block 856, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nelson A. Padilla.

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 24, 2009 1:30 P.M.

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

ZONING CALENDAR

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky,
owner.

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals,
November 24, 2009.

314-08-BZ

CEQR #09-BSA-054M

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 –

For Applicant: Gary Tarnoff.

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
Commissioner, dated December 16, 2008, acting on
Department of Buildings Application No. 110115768, reads in
pertinent part:

- “1. The floor area ratio for the proposed new building
to be used for offices, Use Group 6 and retail
Use Group 10, in a M1-5 zoning district exceeds
5.0 contrary to Section 43-12 of the Zoning
Resolution.
2. The proposed new building does not comply
with the height and setback regulations facing
West 13th Street and Washington Street contrary
to Section ZR 43-43.
3. Proposed building does not provide a rear yard
on the portion of the zoning lot beyond 100 feet
of the intersection of two street lines, contrary to
Section ZR 43-26.
4. Proposed Use Group 10 retail use in an M1-5
zoning district is contrary to Zoning Resolution
Section 42-12;” and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an M1-5 zoning district, the construction of a ten-
story commercial building which does not comply with the
zoning requirements for floor area ratio (FAR), height and
setback, and rear yard, and which provides Use Group 10 retail
use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12; and

WHEREAS, a public hearing was held on this
application on April 28, 2009, after due notice by publication in
the *City Record*, with continued hearings on August 11, 2009,
September 22, 2009, and October 27, 2009, and then to
decision on November 24, 2009; and

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

WHEREAS, the applicant initially proposed to construct
a 12-story commercial building with a total floor area of
117,390 sq. ft. (7.73 FAR), a height of 215 feet, Use Group 10
retail use at the cellar level and on the first, second, and third
floors, and with the western portion of the building cantilevered
over the High Line by ten feet; and

WHEREAS, at hearing, the Board directed the applicant
to reduce the requested relief and bulk of the building; and

WHEREAS, in response, the applicant revised the
proposal to reflect an 11-story building with a floor area of
108,108 sq. ft. (7.12 FAR), a height of 201 feet, Use Group 10
retail use on the first, second, and third floors, and with the
western portion of the building cantilevered over the High Line
by ten feet; and

WHEREAS, at hearing, the Board directed the applicant
to further reduce the request for relief so as to reflect the
minimum variance; and

WHEREAS, in response, the applicant reduced the FAR
and height of the building, eliminated one retail level, and
reduced the cantilever of the western portion of the building
from ten feet to two feet, such that it no longer extends over the

MINUTES

High Line; and

WHEREAS, the current proposal reflects a ten-story commercial building with a total floor area of 93,741 sq. ft. (6.19 FAR), a height of 175 feet, a Use Group 10 retail floor area of 22,012 sq. ft. (1.45 FAR) on the first and second floors, a Use Group 6 office floor area of 71,729 sq. ft. (4.73 FAR), and an additional 11,443 sq. ft. of space located in the cellar; and

WHEREAS, the proposed building will have the following non-complying parameters: an FAR of 6.19 (the maximum permitted FAR is 5.0); a wall height of 175 feet with no setbacks above 85 feet (the minimum required setbacks are 20'-0" along West 13th Street and 15'-0" along Washington Street); no rear yard (a rear yard with a minimum depth of 20'-0" is required at the northwest corner of the site); and Use Group 10 retail use at the first and second floors (Use Group 10 retail is not permitted as of right in an M1-5 zoning district); and

WHEREAS, the cellar level will be occupied by storage and accessory use; and

WHEREAS, the first and second floors will be occupied by Use Group 10 retail use; and

WHEREAS, the third through tenth floors will be occupied by Use Group 6 office use; and

WHEREAS, Community Board 2, Manhattan, reviewed the applicant's original proposal and recommended disapproval of the requested FAR waiver and any waiver for Use Group 10 retail use beyond the cellar, first floor and second floor, but recommended approval of the requested setback and rear yard waivers, on condition that the rooftop not be used as an accessory use for the retail uses and that there not be a permanent use as an eating and drinking establishment or catering establishment; and

WHEREAS, the Board notes that the applicant revised its original proposal to reduce the proposed FAR of the building and to limit the retail use to the first and second floors, in accordance with the Community Board's request; and

WHEREAS, the City Planning Commission submitted written testimony in support of the height and setback waivers, but in opposition to the increase in floor area, the extension of the retail use beyond the second floor, and the proposed cantilever over the High Line; and

WHEREAS, the Greenwich Village Society for Historic Preservation, the Standard Hotel, and certain community members testified in opposition to this application; and

WHEREAS, the Greenwich Village Community Task Force testified in opposition to the FAR waiver in the original proposal and in support of the other aspects of this application; and

WHEREAS, the Greenwich Village/Chelsea Chamber of Commerce, the Meatpacking District Initiative, and certain community members testified in support of this application; and

WHEREAS, the site is located on the northwest corner of Washington Street and West 13th Street, in an M1-5 zoning district; and

WHEREAS, the site is currently occupied by two- and four-story buildings used for meat processing that are proposed

to be demolished; and

WHEREAS, the site has 147'-0" of frontage on the north side of West 13th Street, 103'-3" of frontage on the west side of Washington Street, and a lot area of 15,178 sq. ft.; and

WHEREAS, the High Line, an elevated former railroad trestle, with a height of 25 feet, extends diagonally across the western part of the site, including the entire western lot line, such that the site has an irregular shape, as discussed below; and

WHEREAS, the City owns the High Line and is converting it into a publicly accessible open space; and

WHEREAS, the applicant notes that the owner of the subject site has executed agreements granting an easement for use of the High Line on the site and allowing the City five feet of clearance around the High Line as an accessible maintenance corridor; and

WHEREAS, the High Line easement extends 20 feet above its platform and includes the landing sites for the support columns below it; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the High Line, which cuts diagonally across the site, reduces the developable lot area, and creates an irregularly-shaped developable portion of the site; and (2) the subsurface conditions including: poor soil, contamination, and a high water table; and

WHEREAS, as to the location of the High Line, it extends diagonally across the rectangular site for a width of 57 feet along the site's southern boundary along West 13th Street and a width of approximately 21 feet along the site's northern boundary; and

WHEREAS, the applicant states that the result is that approximately 27 percent of the site is not developable because it is obstructed by the High Line and an easement that extends 20 feet above as it extends diagonally across the western part of the site including the entire western lot line and 23 percent of the site's total street frontage, such that the site is a *de facto* irregularly-shaped lot with a range of widths from approximately 90 feet to 126 feet and a range of depths from approximately zero feet to 103 feet across the site; and

WHEREAS, several of the High Line's support columns extend to grade within the boundaries of the subject site, such that construction below it would be constrained; and

WHEREAS, the applicant states that due to the physical constraints posed by the High Line, a resultant as-of-right building would provide an inefficient building envelope, requiring an irregularly-shaped footprint; and

WHEREAS, further, the High Line limits the applicant's ability to position the building on the site, thus the applicant is unable to distribute the bulk within a complying envelope that has both reasonably sized and uniform floor plates, due to the presence of the High Line across 27 percent of the site; and

WHEREAS, the applicant represents that height, setback, and yard waivers are required to allow for uniform floor plates on fewer floors than would be permitted as of right, which enables efficient use of the building core and communication of infrastructure between floors; and

MINUTES

WHEREAS, the applicant states that compliance with the rear yard regulations would not only result in irregular and less marketable floor plates, but would also leave a small, isolated yard area at the northwest corner of the subject site that would be difficult to use and maintain; and

WHEREAS, the applicant further states that much of the subject rear yard is already encumbered by the High Line, and that because the proposed building will not span the High Line, light and air will be provided to occupants of the building and neighboring buildings; and

WHEREAS, the applicant represents that even with the bulk waivers, the building is taller and narrower than a building on a site not traversed by the High Line due to the reduced developable portion of the site; and

WHEREAS, the applicant further states that there are additional costs associated with a taller and narrower building that results from the constrained site, including exterior façade, steel, masonry, iron, plumbing, elevators, drywall and miscellaneous finish and fit out work, as well as additional general conditions and soft costs; and

WHEREAS, the applicant represents that larger floor plates on the upper floors are required to achieve greater efficiency, as the small size of the as-of-right floor plates make it difficult to amortize construction costs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that, there is not one other site wholly within a 400-ft. radius of the site, which has as wide a portion of the High Line traversing it which has not been built out over the High Line; there is one narrow lot, at the edge of the radius which is almost completely obscured by the High Line, without enough remaining lot area for a feasible development; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant (the "Geotechnical Report") stating that soil borings indicate that sand is located on the site in the area between 14 and 40 feet below grade and is likely liquefiable; and

WHEREAS, the applicant states that, as a result, the foundation of the proposed building must be constructed with longer, more costly piles than comparable sites in the area because the pile design cannot rely on friction between the soil and pile within the liquefiable zone and the piles must extend through the liquefiable zone; and

WHEREAS, the applicant further states that the subject site is underlain by up to 20 feet of fill materials located above the liquefiable zone, such that the proposed building must be supported by a deep foundation system; and

WHEREAS, the applicant represents that the site's proximity to sensitive structures such as the High Line will likely preclude the use of driven piles because of the vibrations they generate, thus necessitating the use of more expensive and time consuming drilled piles; and

WHEREAS, the applicant further represents that, due to the poor soil conditions on the site, the adjacent structures to the west and north will require underpinning schemes

involving drilled piles spaced every eight feet, with the foundations of the adjacent structures supported on new grade beams cast against or under the existing foundations and spanning between the new piles; and

WHEREAS, as to the uniqueness of these soil conditions, according to the Geotechnical Report, recent developments in the vicinity of the site were either able to utilize previously existing building foundations for the new construction, or were not located in a probable liquefiable zone, and therefore could use shorter piles than the subject site; and

WHEREAS, additionally, the applicant represents that the site has a uniquely high water table with water detected at a depth of 12 feet; and

WHEREAS, at hearing, the Board questioned the applicant's contention that the water table was a unique condition, noted that the required underpinning is consistent with other development in the area and throughout New York City, and directed the applicant to eliminate costs associated with those conditions from the hardship analysis; and

WHEREAS, based on the applicant's Geotechnical Report and submissions regarding nearby construction, the Board agrees that the poor soil conditions are unique and contribute to a hardship at the site; and

WHEREAS, as to soil contamination at the subject site, the applicant states that soil samples detected concentrations of lead, which will require special handling, disposal, and reporting procedures during site development, and groundwater at the site contains concentrations of chlorinated solvents which have the potential to volatilize and may necessitate the need for the installation of a vapor/waterproofing barrier under the building; and

WHEREAS, the Board notes that, although soil contamination alone may not be a unique condition, it accepts that the hazardous lead condition is not a prevalent condition in the area; and

WHEREAS, the applicant submitted a report from a construction cost estimator that studied the hard construction costs associated with the unique site conditions; and

WHEREAS, the study concluded that the hard costs associated with the unique site conditions, in particular the excavations and foundations and the additional construction costs associated with the taller building that results from the constrained footprint, total approximately \$5,251,045; and

WHEREAS, the applicant represents that, in conjunction with a hazardous materials remediation cost of between \$475,000 to \$700,000, and a generated soft cost premium of approximately \$1,225,000, the total cost premium resulting from the unique conditions of the subject site are approximately \$7,000,000; and

WHEREAS, as to the requested floor area waiver, the applicant states that the irregular shape of the developable portion of the subject lot and the subsurface soil conditions lead to increased project development costs and make it difficult to amortize construction costs in an as of right project; thus the requested floor area waiver is necessary in order to achieve economies of scale that would provide a reasonable return; and

WHEREAS, as to the requested waiver for Use Group 10 retail, the applicant states that although Use Group 6 retail is

MINUTES

permitted as-of-right, it would not be feasible to rent the second floor to a tenant without also offering substantial space on the ground floor; thus, any such proposal would likely exceed the 10,000 sq. ft. limitation on many Use Group 6 retail uses; and

WHEREAS, the applicant represents that office use on the second floor would not generate enough rental income to support the construction of the building, as the proximity of the High Line and the subsurface soil conditions make it difficult to amortize construction costs in a conforming project; and

WHEREAS, the applicant notes that ZR § 74-922 authorizes the Department of City Planning (“DCP”) to issue a special permit for Use Group 10 retail use in the subject zoning district upon DCP’s determination that all of the findings for the special permit have been met; and

WHEREAS, the applicant represents that the proposed Use Group 10 retail use at the subject site satisfies the conditions and findings for a special permit pursuant to ZR § 74-922, including that the principal vehicular access is not located on a local narrow street, that no vehicular entrances or exits are provided and therefore no reservoir spaces are required, and that the site is in close proximity to bus and rapid transit facilities; and

WHEREAS, based upon the above, the Board finds that the presence of the High Line, the resultant irregular shape of the developable portion of the lot, and the poor soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study that analyzed: (1) the existing commercial use; (2) a 5.0 FAR commercial development with height and setback non-compliance; (3) a complying hotel development; (4) a 6.5 FAR lesser variance proposal; and (5) a 12-story 7.73 FAR proposal; and

WHEREAS, the applicant included incremental premium costs associated with (1) underpinning, (2) protection of historic structures, and (3) dewatering measures; and

WHEREAS, as noted, the Board rejected these incremental costs, which contributed to a total of \$16 million, because it determined that they are prevalent conditions in the area and do not rise to the level of uniqueness; and

WHEREAS, the applicant concluded that only the 7.73 FAR scenario resulted in a reasonable rate of return and a reduced floor area could not generate the income required to offset incremental costs incurred in addressing the site’s physical conditions; and

WHEREAS, at hearing, the Board directed the applicant to revise the financial analysis and to review lesser variance alternatives; and

WHEREAS, in response, the applicant provided additional analysis for (1) an 11-story 7.12 FAR proposal; and (2) a revised 5.0 FAR commercial development with height and setback non-compliance; and

WHEREAS, ultimately, the applicant revised the hardship costs and submitted the current iteration of the proposal as a 6.19 FAR commercial building, with \$7 million of unique hardship costs; and

WHEREAS, the applicant concluded that none of the as-

of-right or lesser variance scenarios would result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, based upon its review of the applicant’s submissions, the Board has determined that because of the subject site’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, as to bulk, the applicant represents that the proposed height of 175 feet and 6.19 FAR are compatible with the neighborhood character; and

WHEREAS, in support of this assertion, the applicant submitted a radius diagram reflecting that there are eight buildings within a 400-ft. radius of the subject site that have an FAR greater than 5.0; and

WHEREAS, the applicant notes that the Standard Hotel, an 18-story hotel building located immediately south of the subject site is built to an FAR of 5.24 and has a height of 271’-0”; and

WHEREAS, the applicant represents that the scale and bulk of the proposed building is similar to that of the Standard Hotel and the High Line Building, a 16-story retail office building being constructed immediately northwest of the project site, with a proposed height of 221’-0” and is part of a merged zoning lot which has a total FAR of 5.0, but, the applicant represents, that based on the footprint of the individual lot it is located on, the High Line Building itself is equivalent to a built FAR of 7.24 ; and

WHEREAS, the applicant states that an as-of-right building on the site could reach to 13 stories, with the required setbacks; and

WHEREAS, further, the applicant states that the Special West Chelsea District north of the site, permits a range of base FARs from 5.0 to 7.5; and

WHEREAS, as to the rear yard, the applicant notes that the rear yard is either traversed by or abutting the High Line; and

WHEREAS, at hearing, the Board raised concerns about potential shadows from the proposed building onto the High Line open space adjacent to the site; and

WHEREAS, the applicant notes that the CEQR Technical Manual indicates that a reduction in sunlight may not be significant if vegetation can easily be replaced with more shade-tolerant species; and

WHEREAS, the applicant notes that many existing plant species adjacent to the site are shade tolerant, and that, based on information obtained from the Friends of the High Line, adjustments may be made in certain locations as part of the ongoing evolution of plant species to account for shadows; and

WHEREAS, the applicant’s Environmental Assessment

MINUTES

Statement (EAS) states that the period of greatest shadow coverage on the High Line generated by the proposed project would be in mid-morning, and that those areas of the High Line affected by project generated-shadows would still receive sunlight during the midday and/or afternoon (depending on the analysis dates); and

WHEREAS, the Board agrees with the conclusion in the EAS that the proposed project would not result in significant adverse shadow impact on open spaces resources in the surrounding area; and

WHEREAS, as to the proposed Use Group 10 use, the applicant states that it is consistent with the character of the Meatpacking District, which is occupied by a range of commercial uses; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the range of uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of the proposed Use Group 10 retail use on the first and second floor will not impact nearby conforming uses; and

WHEREAS, as noted above, the DCP special permit, pursuant to ZR § 74-922, contemplates Use Group 10 use within M1-5 zoning districts, if certain findings are met; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the High Line, the resulting irregularity of the subject lot, and the subsurface soil conditions on the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a 12-story building with a floor area of 117,390 sq. ft. (7.73 FAR), a height of 215 feet, Use Group 10 retail use at the cellar level and first, second and third floors, and with the western portion of the building cantilevered over the High Line by ten feet; and

WHEREAS, at the Board's direction, the applicant revised its proposal by reducing the FAR to 6.19 and the building height to 175 feet, limiting the Use Group 10 use to the first and second floors, and reducing the cantilever of the western portion of the building from ten feet to two feet, such that it no longer extends over the High Line; and

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

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

WHEREAS, the project is classified as a Type I 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. 09BSA054M, dated November 13, 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 site is located in the State/National Register Gansevoort Market Historic District, and the two buildings on the site are to be demolished for the proposed project; and

WHEREAS, the New York City Landmarks Preservation Commission (LPC) has reviewed the Environmental Assessment Statement (EAS) and requested a Historic American Buildings Survey (HABS) documentation for the two buildings to be demolished; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP approved the Revised Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) on August 7, 2009; and

WHEREAS, DEP has concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval; 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for FAR, height and setback, and rear yard, and which provides Use Group 10 retail use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 19, 2009"–(16) sheets and "November 12, 2009"–(1) sheet; and *on further condition*

THAT the following shall be the bulk parameters of the proposed building: a maximum total height of 175 feet, including rooftop mechanicals; a maximum total floor area of 93,741 sq. ft. (6.19 FAR); a maximum Use Group 10 retail floor area of 22,012 sq. ft.; a maximum Use Group 6 office

MINUTES

floor area of 71,729 sq. ft.;

THAT Use Group 10 retail use shall be limited to the first and second floors;

THAT a scope of work for HABS documentation shall be submitted to LPC for review and approval prior to DOB's issuance of demolition permits;

THAT DOB shall not issue a permanent certificate of occupancy prior to DEP's issuance of a Notice of Satisfaction or a Notice of No Objection for the Remedial Closure Report;

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

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, November 24, 2009.

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 one family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

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

COMMUNITY BOARD #15BK

APPEARANCES –

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, the decision of the Brooklyn Borough Commissioner, dated January 16, 2009, acting on Department of Buildings Application No. 310243616, reads in pertinent part:

- “1. Proposed floor area ratio contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage contrary to ZR 23-141.
4. Proposed rear yard contrary to ZR 23-47;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, and rear yards, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on June 23, 2009 after due notice by publication in *The City Record*, with continued hearings on July 28, 2009, August 25, 2009, and November 10, 2009, and then to decision on November 24, 2009; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Amherst Street, between Hampton Avenue and Oriental Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 1,904 sq. ft. (0.45 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,904 sq. ft. (0.45 FAR) to approximately 3,096 sq. ft. (0.74 FAR); the maximum floor area permitted is 2,496 sq. ft. (0.60 FAR, including attic bonus); and

WHEREAS, the applicant proposes to provide an open space of 59 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40'-0" by 100'-0" reflected in the tax map on record at the Department of Finance ("DOF") and the lot dimensions of 40'-0" by 104'-0" claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40'-0" by 104'-0"; and

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

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

WHEREAS, the Board finds that, under the conditions

MINUTES

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

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

Therefore it is resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and § 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 12, 2009"-(8) sheets, "May 20, 2009"-(2) sheets and "November 20, 2009"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,096 sq. ft. (0.74 FAR); an open space of 59 percent; a lot coverage of 41 percent; a maximum wall height of 21'-0"; a total height of 27'-6"; a side yard with a minimum width of 8'-9" along the southern lot line; a side yard with a minimum width of 5'-0" along the northern lot line; and a rear yard with a minimum depth of 24'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

Adopted by the Board of Standards and Appeals, November 24, 2009.

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: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel and Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

43-09-BZ

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (*Southside Charter High School*) in a recently constructed building, contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Florence Adu, Mark Ainleg, Annie BeArhaurd, Paul C., Hiram Rothkrug, Nesli Erogan and Maria E.

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

164-09-BZ

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

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

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot

MINUTES

416, 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

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 January
12, 2010, at 1:30 P.M., for decision, hearing closed.

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 (§22-00). R3-1 zoning 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

APPEARANCES –

For Applicant: Adam Rothkrug.

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

218-09-BZ

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty
Corporation, owner; McDonald's Corporation, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-
243) to allow an accessory drive-through facility to an
eating and drinking establishment (*McDonald's*). C1-3/C8-2
zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between
McKeever Place and Bedford Avenue, bounded by Sullivan
Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

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

224-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Springfield-
Hempstead Realty, LLC, owner; Walgreens Company,
lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-
52) to allow for accessory commercial parking to be located
in the residential portion of a split zoning lot. C2-3/R3-2 and

R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead
Avenue, Northwest corner of intersection of Hempstead
Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of
Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to January
26, 2010, at 1:30 P.M., for postponed hearing.

246-09-BZ

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for
Louisiana Purchase, LLC, owner.

SUBJECT – Application August 21, 2009 – Variance (§72-
21) to allow for the construction of a four story assisted
living facility (*Brooklyn Boulevard ALP*) contrary to floor
area, dwelling units and parking regulations (§§ 23-141/62-
321, 23-22, 25-23). R5 district.

PREMISES AFFECTED – 636 Louisiana Avenue, western
side of Louisiana Avenue at its intersection with Twin Pines
Drives, Block 8235, Lot 140, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most, David Marx, Robert Marx,
A. Schiffman and Anthony Hecht.

ACTION OF THE BOARD – Laid over to January
12, 2010, at 1:30 P.M., for continued hearing.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer
Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-
21) to allow for expansion of the community house for the
Central Synagogue (UG 4), contrary to floor area and height
and setback regulations. (§§33-12, 81-211, 33-432). C5-2,
C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side
of East 55th Street between Park Avenue and Lexington
Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael Sillerman.

For Opposition: Jordan Most, Steven Greystein and Brad
Becker.

ACTION OF THE BOARD – Laid over to January
12, 2010, at 1:30 P.M., for continued hearing.

250-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP., for
532 Madison Syndicate, owner; Madison/Fifth Associates
LLC c/o Stahl Real Estate, lessee.

SUBJECT – Application August 28, 2009 – Special Permit
(§73-36) to allow the legalization of a physical culture
establishment (*Ultimate Training Center*) on the sixth and

MINUTES

seventh floors in an existing seven-story commercial building. C5-3 (MiD) zoning district.

PREMISES AFFECTED – 532 Madison Avenue, East 54th Street, Fifth Avenue; East 55th Street, Block 1290, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Marcia Kesner.

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 December 15, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.