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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*

Margaret P. Stix, *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

DOCKET112

CALENDAR of March 3, 2009

Morning113

Afternoon114

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, February 10, 2009**

Morning Calendar115

Affecting Calendar Numbers:

889-55-BZ	69-15 164 th Street, Queens
719-56-BZ	2525 Victory Boulevard, Staten Island
1228-79-BZ	2436 McDonald Avenue, Brooklyn
245-03-BZ	160-11 Willets Point Boulevard, Queens
51-06-BZ	188-021/22 Union Turnpike, Queens
617-56-BZ	3120 Albany Crescent, Bronx
395-60-BZ	2557-2577 Linden Boulevard, Brooklyn
337-90-BZ	1415/17 East 92 nd Street, Brooklyn
218-96-BZ	138 East 39 th Street, Manhattan
141-07-A	129-48 Hookcreek Boulevard, Queens
270-08-A	221 Betts Avenue, Bronx
271-08-A	221 A Betts Avenue, Bronx

Afternoon Calendar122

Affecting Calendar Numbers:

159-08-BZ	68-70 Spring Street, Manhattan
163-08-BZ	2022 Avenue M, Brooklyn
198-08-BZ	268 Park Avenue, Manhattan
226-08-BZ	172 Empire Boulevard, Brooklyn
227-08-BZ	Grand Concourse, Bronx
289-08-BZ	966 East 23 rd Street, Brooklyn
63-08-BZ	116-33 Queens Boulevard, Queens
133-08-BZ	1601 Bronxdale Avenue, Bronx
216-08-BZ	1624 Shore Boulevard, Brooklyn
223-08-BZ	4553 Arthur Kill Road, Staten Island
228-08-BZ	2802 Avenue R, a/k/a 1801-1811 East 28 th Street, Brooklyn
253-08-BZ	2623 East 11 th Street, Brooklyn
275-08-BZ	98 South 4 th Street, Brooklyn
276-08-BZ	150 East 55 th Street, Manhattan
291-08-BZ	3141 Bedford Avenue, Brooklyn

DOCKETS

New Case Filed Up to February 10, 2009

16-09-BZ

459 Broadway, South west corner of Broadway and Grand Street., Block 231, Lot(s) 30, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

17-09-BZ

5421 Beverly Road, North side of Beverly Road, between East 54th Street and East 55th Street., Block 4739, Lot(s) 33, Borough of **Brooklyn, Community Board: 17**. Special Permit (73-03 & 73-30) to allow a non-accessory radio facility and all accessory equipment.

18-09-BZ

250 West 54th Street, Between Broadway and 8th Avenue., Block 1025, Lot(s) 54, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

19-09-A

132-55 34th Avenue, North side of 34th Avenue, approximately 75' east of the intersection formed by Collins Place and 34th Avenue., Block 4946, Lot(s) 126, Borough of **Queens, Community Board: 7**. Construction within mapped street, contrary to Section 35 of the General City Law.

20-09-BZ

54-44 Little Neck Parkway, Northwest of the intersection of Little Neck Parkway and Nassau Bopulevard., Block 8256, Lot(s) 108, Borough of **Queens, Community Board: 11**. Special Permit (73-03 & 73-30) to allow a non-accessory radio tower.

21-09-BZ

222-89 Braddock Avenue, North west corner of Braddock Avenue and Ransom Street., Block 7968, Lot(s) 31, Borough of **Queens, Community Board: 13**. Special Permit (73-03 & 73-30) to allow a non-accessory radio facility.

22-09-A

663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: .** Construction within a bed of a mapped street, contrary to Section 35 , Article 3 of the General City Law.

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

MARCH 3, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 3, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

66-90-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Time/waiver to obtain an Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in an R-5 zoning district, which expired on December 31, 2008.

PREMISES AFFECTED – 43-07 Astoria Boulevard, north east corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

332-98-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for Workmen's Circle Home & Infirmary, owners.

SUBJECT – Application January 30, 2009 – Extension of Time/waiver to Complete Construction of a previously approved Variance (72-21) for the enlargement of a (UG3) existing nursing home, in an R5 zoning district, which expired on April 13, 2003.

PREMISES AFFECTED – 3155 Grace Avenue, bounded by Grace, Hammersley, Ely and Burke Avenues, Block 4777, Lots 2 & 57, Borough of Bronx.

COMMUNITY BOARD #12BX

215-06-BZ

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

SUBJECT – Application January 28, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for an existing gasoline service station (Exxon) with accessory convenience store, in a C1-2/R4 zoning district, which expired on January 24, 2008.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #3Q

142-08-A

APPLICANT – Eric Palatnik, P.C., for George Kraff, owner.

SUBJECT – Application May 9, 2008 – Proposed construction of a three story residential building which does not front on an officially mapped street contrary to General City Law Section 36. R6-OP Zoning District.

PREMISES AFFECTED – 225 Brighton 2nd Lane, corner of Brighton 2nd Lane and Brighton 2nd Place, Block 8662, Lots 153, Borough of Brooklyn.

COMMUNITY BOARD #13BK

272-08-A

APPLICANT – Elizabeth Safian, Sheldon Lobel, P.C., for Brighton 2nd Place, LLC, owner.

SUBJECT – Application November 5, 2008 – Proposed construction of residential building not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 35 Brighton 2nd Place, premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane, Block 8662, Lots 230, 232, 234, Borough of Brooklyn.

COMMUNITY BOARD #13BK

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

MARCH 3, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 3, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

269-06-BZ/193-08-A

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to section 22-00. R3-2 district (South Richmond Special District).

SUBJECT – Application July 15, 2008 – Proposed construction of retail/commercial space located in an existing shopping center not fronting on a mapped street contrary to General City Law Section 36. R3-2 Zoning District.

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

88-08-BZ

APPLICANT – Alfonso Duarte, for Naresh M. Gehi, owner.

SUBJECT – Application April 11, 2008 – Variance pursuant to §72-21 to allow the commercial office conversion of an existing residential building; contrary to use regulations §22-00. R5 District.

PREMISES AFFECTED – 101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot 68, Borough of Queens.

COMMUNITY BOARD #9Q

310-08-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Convent of the Sacred Heart, owner.

SUBJECT – Application December 18, 2008 – Special Permit (73-19) to allow construction of a school building in a C8-4 zone, contrary to use regulations. C8-4 District.

PREMISES AFFECTED – 406 East 91st Street, south side of East 91st Street, 94' west of First Avenue, Block 1570, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

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

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

SPECIAL ORDER CALENDAR

889-55-BZ

APPLICANT – J & H Management Corporation, owner.
SUBJECT – Application October 22, 2008 – Application filed pursuant to §11-411 to extend the term of Automotive Repair Facility for 10 years which expired on May 1, 2008. The application seeks a Waiver of the Rules of Practice and Procedure for an Extension of Time to obtain a Certificate of Occupancy. The subject site is located in a C1-2/R3-2 zoning district.

PREMISES AFFECTED – 69-15 164th Street, Block 9631, Lot 38, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of an automotive repair facility with accessory uses, which expired on May 1, 2008; and

WHEREAS, a public hearing was held on this application on January 27, 2009 after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the east side of 164th Street between 69th Avenue and Jewel Avenue, in a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 3, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with accessory uses; and

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

WHEREAS, most recently, on July 13, 2004, the Board granted an extension for a term of five years from the expiration of the prior grant, to expire on May 1, 2008, and amended the grant to permit a change in use from a gasoline service station to automobile repairs with hand tools only, and discontinued the following uses: auto body work, transmission work, lubritorium, auto-washing, offices, automobile sales, and the parking and storage of motor vehicles; and

WHEREAS, the applicant now requests a ten-year extension of term; and

WHEREAS, the applicant further requests that the Board reinstate the following uses which are accessory to the automobile repair facility use and were discontinued in the previous grant: lubritorium, auto-washing, offices, and the parking and storage of motor vehicles; 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 and reinstatement of accessory uses which were discontinued in the previous resolution 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 December 16, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from May 1, 2008, to expire on May 1, 2018, and to permit the reinstatement of the following uses: lubritorium, auto-washing, offices, and the parking and storage of motor vehicles; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received October 22, 2008”-(1) sheet; and *on further condition:*

THAT the term of the grant shall expire on May 1, 2018;

THAT the following uses shall not be permitted on the site: (1) automobile sales; (2) auto body work; and (3) transmission work;

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

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. 410162755)

Adopted by the Board of Standards and Appeals February 10, 2009.

MINUTES

719-56-BZ

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

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

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

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Arthur Sullivan and Walter T. Gorman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a gasoline service station with accessory uses, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 9, 2008, after due notice by publication in *The City Record*, with continued hearings on October 28, 2008, December 16, 2008, and January 27, 2009, and then to decision on February 10, 2009; and

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

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

WHEREAS, the site is located on the northwest corner of the intersection at Victory Boulevard and Willowbrook Road, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 25, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied as a gasoline service station with accessory uses for a term of ten years; 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 October 26, 1999 for a term of ten years from the expiration of the prior grant, to expire on April 27, 2007; a condition of the grant was that a new certificate of occupancy be obtained by October 26, 2000; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to

administrative oversight during the merger of the corporate owner; and

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

WHEREAS, the applicant states that some site improvements encroach upon widening lines established by the City of New York for Victory Boulevard and Willowbrook Road; and

WHEREAS, the applicant represents that it will begin relocating the improvements behind the widening lines by late February 2009 and will complete the work by late April 2009; and

WHEREAS, at hearing, the Board requested that the applicant: (1) remove fencing and dead trees from the site's frontage along Montauk Place; (2) remove stored cars from the site; and (3) eliminate a curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road; and

WHEREAS, in response, the applicant submitted photographs showing that cars are no longer stored on the site and that the outer fencing along Montauk Place has been removed; and

WHEREAS, in addition, the applicant represents that it will replace the dead trees along Montauk Place by the end of February and plant new trees by late-April 2009, and that the curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road will be removed by late-April 2009; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions 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 June 25, 1957, so that as amended this portion of the resolution shall read: "to extend the term for ten years from April 27, 2007, to expire on April 27, 2017, and to grant an extension of time to obtain a certificate of occupancy to February 10, 2010; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received October 14, 2008"- (5) sheets; and *on further condition*:

THAT the term of the grant shall expire on April 27, 2017;

THAT a certificate of occupancy shall be obtained by November 10, 2009;

THAT all improvements on the site shall be relocated behind the widening lines established for Victory Boulevard and Willowbrook Road;

THAT the dead trees located on the site's frontage along Montauk Place shall be replaced with new trees;

THAT the curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road shall be eliminated and the curbing restored;

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

MINUTES

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. 510027506)

Adopted by the Board of Standards and Appeals, February 10, 2009.

1228-79-BZ

APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.

SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.

PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of a retail store (Use Group 6), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 3, 2009, and then to decision on February 10, 2009; and

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

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

WHEREAS, the site is located on the west side of McDonald Avenue, between Avenue W and Village Road South, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 24, 1980 when, under the subject calendar number, the Board granted a variance to permit the enlargement of a machine shop (Use Group 16) for a term of 15 years; and

WHEREAS, on May 21, 1996, the Board extended the variance for a term of ten years from the expiration of the

prior grant and amended the grant to legalize the change of occupancy from a machine shop (Use Group 16) to a retail store (Use Group 6); a condition of the grant was that a new certificate of occupancy be obtained by May 21, 1997; and

WHEREAS, the applicant now seeks a ten-year extension of the term of the variance, which expired on June 24, 2005, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board requested that the applicant remove the sign from the prior retail use located on the south side of the building; and

WHEREAS, in response, the applicant submitted photographs indicating that the sign has been removed; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions 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 June 24, 1980, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 24, 2005, to expire on June 24, 2015, and to grant an extension of time to obtain a certificate of occupancy to August 10, 2009; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received December 5, 2008”-(6) sheets and “January 7, 2009”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 24, 2015;

THAT a certificate of occupancy shall be obtained by August 10, 2009;

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. 310161641)

Adopted by the Board of Standards and Appeals, February 10, 2009.

245-03-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Allied Enterprises LLC, owner.

SUBJECT – Application November 25, 2008 – Extension of Term of a previously granted special permit for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), in an R3-2/C1-2 zoning district, which expired on December 9, 2008.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 9, 2008; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

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

WHEREAS, Council Member Tony Avella provided testimony in support of this application, with conditions; and

WHEREAS, the site is located on the northeast corner of Francis Lewis Boulevard and Willets Point Boulevard, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a McDonald's fast food restaurant), with a drive-through facility with a ten-vehicle reservoir capacity, and 15 accessory parking spaces; and

WHEREAS, on December 9, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years; and

WHEREAS, the applicant requests an additional five-year extension of term; and

WHEREAS, the applicant states that the hours of operation of the drive-through facility are: Sunday through Thursday, from 6:00 a.m. to 12:00 a.m.; and Friday and Saturday, from 6:00 a.m. to 1:00 a.m.; and

WHEREAS, Council Member Avella raised concerns about traffic congestion on Francis Lewis Boulevard caused by patrons queuing along Willets Point Boulevard during the facility's peak hours; and

WHEREAS, in response, the applicant agreed to: (i) install signage restricting the curb cut along Willets Point Boulevard to an entrance only; (ii) install a speed bump at the exit of the drive-through; and (iii) to hire an additional employee to expedite service; and

WHEREAS, the applicant submitted photographs evidencing the installation of the new sign and the speed bump; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is appropriate, so long as the restaurant complies with all conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said dated December 9, 2003, so that as amended this portion of the

resolution shall read: "to extend the term for five years from December 9, 2008, to expire on December 9, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application and marked "Received November 25, 2008"--(3) sheets and "January 23, 2009"--(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 9, 2013;

THAT all signage shall comply with C1 zoning district regulations;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

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

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;

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 App. No. 401574060)

Adopted by the Board of Standards and Appeals, February 10, 2009.

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application December 29, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the operation of a PCE in a portion of the cellar and the legalization of a dance studio in the cellar and first floor of an existing commercial building, in an C1-2/R2 zoning district, which expired on December 12, 2008.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike between 188th and 189th Street, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on December 12, 2008, for a physical culture

MINUTES

establishment (PCE) and dance studio; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

WHEREAS, the site is located on the south side of Union Turnpike, between 188th Street and 189th Street, within a C1-2 (R2) zoning district; and

WHEREAS, on December 12, 2006, under the subject calendar number, the Board granted a variance to permit the operation of a PCE and the legalization of the existing dance studio at the subject site, with certain conditions; and

WHEREAS, the PCE occupies approximately 8,647 sq. ft. of floor area in the cellar; the existing dance studio occupies 1,198 sq. ft. of floor area on the first floor and approximately 3,473 sq. ft. of floor area in the cellar of a one-story commercial building; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained by December 12, 2008; and

WHEREAS, the applicant represents that the owner's failure to obtain the certificate of occupancy within the stipulated time was due to construction delays beyond its control; and

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

WHEREAS, the applicant represents that an extension of approximately 15 months is necessary to finalize a lease agreement with a new tenant, complete the construction of the PCE, and secure the certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that an extension of time to obtain a certificate of occupancy until May 10, 2010 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 12, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to May 10, 2010; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by May 10, 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. 402279495)

Adopted by the Board of Standards and Appeals, February 10, 2009.

617-56-BZ

APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer,

owner.

SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231st Street, Block 3267, Lot 15, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Ron Saunders.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

395-60-BZ

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

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

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

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Sephian.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 10 A.M., for continued hearing.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

MINUTES

APPEARANCES –

For Applicant: Elizabeth Sephian.

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

218-96-BZ

APPLICANT – Mitchell S. Ross, Esq. for The Armenian Apostolic Church.

SUBJECT – Application January 16, 2009 – Extension of Time to complete construction/waiver for a one story rear enlargement above the basement of an existing community use facility (The Armenian Prelacy), which expired on January 11, 2007, located in an R8B zoning district.

PREMISES AFFECTED – 138 East 39th Street, South side, 123.4 feet east of Lexington Avenue, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Hakime Altine.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 7, 2008, acting on Department of Buildings Application No. 402408630, reads in pertinent part:

“A new application for a proposed new building is hereby submitted to be processed. The building will be in the bed of a mapped street contrary to General City Law Section 35;” and

WHEREAS, this application requests permission to build a two-story, single-family home partially in the bed of two mapped streets: (i) Hook Creek Boulevard between 129th Avenue and 130th Avenue; and (ii) 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in the *City Record*, with continued hearings on July 15, 2008, September 9, 2008, October 28, 2008, November 25, 2008, January 13, 2009, and February 10, 2009; the hearing was then closed and set for decision February 10, 2009; and

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

WHEREAS, the applicant originally proposed to build a two-story mixed-use residential/community facility building on the site; and

WHEREAS, Community Board 13, Queens, recommended disapproval of the original application; and

WHEREAS, the applicant subsequently revised its proposal and now seeks to build a two-story single-family home; and

WHEREAS, in response, Community Board 13, Queens, withdrew its earlier objections to the application; and

WHEREAS, by letter dated June 14, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated September 13, 2007, the Department of Environmental Protection (“DEP”) states that it has reviewed the application and advises the Board that there is an existing 15-inch diameter combined sewer and an existing eight-inch diameter city water main in Hook Creek Boulevard between 129th Avenue and 130th Avenue, and there is an 18-inch diameter combined sewer and an eight-inch diameter city water main in 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, DEP also notes that Amended Drainage Plan No. 42 (5), 42S (15), 42SW (7), 41SD calls for a future 15-inch diameter combined sewer in Hook Creek Boulevard between 129th Avenue and 130th Avenue, and a future 18-inch diameter combined sewer in 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, DEP requested that the applicant provide a survey showing the width of Hook Creek Boulevard and 130th Avenue at the above locations, and the distances between the proposed development, mapped lines and existing sewers and water mains; and

WHEREAS, in response, the applicant submitted a revised survey indicating that the 100-foot total width of Hook Creek Boulevard and the approximately 38’-8” of Hook Creek Boulevard remaining between 129th Avenue and 130th Avenue

MINUTES

will be available for the purpose of installation, maintenance and/or reconstruction of the existing 15-inch diameter combined sewer, eight-inch diameter city water main and future 15-inch diameter combined sewer; and

WHEREAS, the revised survey also indicates that the 60-foot total width of 130th Avenue and the approximately 36'-10" of 130th Avenue remaining between Hook Creek Boulevard and 244th Street will be available for the purpose of installation, maintenance and/or reconstruction of the existing 18-inch diameter combined sewer, eight-inch diameter city water main and future 18-inch diameter combined sewer; and

WHEREAS, by letter dated March 31, 2008, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated January 15, 2009, the Department of Transportation ("DOT") states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, therefore, no transportation improvements requiring the street are contemplated; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Queens Borough Superintendent, dated January 7, 2008, acting on New Building Permit No. 402408630-01-NB, is hereby modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received January 8, 2009 -(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT DOB shall review the proposed lot subdivision prior to the issuance of any permit;

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

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

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

Adopted by the Board of Standards and Appeals, February 10, 2009.

270-08-A

APPLICANT – NYC Department of Buildings.
OWNER OF RECORD: Johnny Ubiles.
SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard

Area requirements as set forth in the Building Code and Department of Buildings TPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 Betts Avenue (aka 221B Betts Avenue) west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Amandus Derr, Department of Buildings.
For Opposition: John Ubiles.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

271-08-A

APPLICANT – NYC Department of Buildings.
OWNER OF RECORD: Pedro Febres.
SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 A Betts Avenue, west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Amandus Derr, Department of Buildings.
For Opposition: Pedro Febres.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 10, 2009
1:30 P.M.**

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

ZONING CALENDAR

159-08-BZ

CEQR #08-BSA-091M

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 15, 2008, acting on Department of Buildings Application No. 110146486, reads in pertinent part:

“Proposed residential use within an M1-5B zone is not permitted;

Proposed commercial use (UG6) below the floor level of the second story is contrary to ZR 42-14(D)

(2) (b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district, a seven-story and penthouse residential building with 12 dwelling units and ground floor retail use, which is contrary to ZR §§ 42-10 and 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, with continued hearings on October 28, 2008, November 18, 2008, December 16, 2008, and January 27, 2009, and then to decision on February 10, 2009; and

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

Montanez and Commissioner Ottley-Brown; and

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

WHEREAS, a number of area residents testified in opposition to the application; and

WHEREAS, additionally, a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the “Opposition”); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject premises is located on the south side of Spring Street between Lafayette Street and Crosby Street, and has 4,766 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5B zoning district and is occupied by a one-story commercial building which will be demolished; and

WHEREAS, the applicant proposes a seven-story, 12-unit residential building with ground floor retail use, a floor area of 23,830 sq. ft. (5.0 FAR), a street wall height of 94’-0”, a total building height of 106’-0”, and a rear yard of between 7’-4” and 8’-11” at the first floor and between approximately 31’-10” and 32’-2” above the first floor; and

WHEREAS, the applicant initially proposed a seven-story building with a street wall height of 112’-0” and a total building height of 124’-0”; during the hearing process, the building height was reduced, reflecting the parameters now proposed; and

WHEREAS, as to the proposed building: (1) the cellar level will be occupied by commercial space and mechanicals, (2) the first floor will be occupied by the building lobby and retail use, (3) the second floor through sixth floor will each be occupied by two residential units; and (4) the seventh floor and penthouse level will be occupied by two duplex units; and

WHEREAS, further, the proposed building will provide a 30’-0” setback above the seventh floor on the Spring Street frontage at a height of 94’-0”; and

WHEREAS, the applicant states that the small size of the subject site is a unique physical condition that creates an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, the applicant states that the site has a frontage of approximately 50’-0” and an irregular depth of between approximately 85’-2” and 88’-4”, for a total lot area of 4,725 sq. ft.; and

WHEREAS, the applicant represents that the size of the site would not accommodate efficient floor plates for a conforming commercial office development; and

WHEREAS, the applicant represents that the small size of the site results in a floor plate of no more than 3,625 sq. ft., of which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms); and

WHEREAS, the applicant further represents that the core of a conforming development would average approximately 630 sq. ft. per floor which is the same size as the core of a building with floor plates of approximately 7,250 sq. ft.; and

WHEREAS, the applicant states that the core of a

MINUTES

conforming development on the subject site would result in a 17 percent loss of rentable area per floor, while the loss of rentable area for the same size core in a building with floor plates of 7,250 sq. ft. would be nine percent per floor; and

WHEREAS, the applicant further states that the fixed cost of construction of the core and its operating expenses relative to the floor plate are significantly higher per square foot on a lot of this size than on a lot with a floor plate of 7,250 sq. feet; and

WHEREAS, as to the uniqueness of the site conditions, the applicant submitted an analysis of development within an area bounded by Broadway to the west, East 4th Street to the north, Bleecker Street to the south and the Bowery to the east, within the M1-5B zoning district (the "study area"); and

WHEREAS, of the approximately 400 lots within the study area, the analysis indicates that 22 sites (5.5 percent) other than the subject site had lot areas of less than 5,000 sq. ft. and were either vacant or occupied by one-story buildings; and

WHEREAS, the Opposition contends that the applicant has failed to establish the uniqueness of the subject site; and

WHEREAS, the Board notes that the incidence of 22 lots within a 400-lot study area sharing the same "unique conditions" as the subject site is not, in and of itself, sufficient to defeat a finding of uniqueness; and

WHEREAS, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980)); and

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

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) a conforming six-story and penthouse office building; and (2) the proposed seven-story and penthouse residential building; and

WHEREAS, the feasibility study indicated that a conforming office building would not result in a reasonable return, while the proposed residential building would result in a reasonable return; and

WHEREAS, at hearing, the Board asked the applicant to provide a financial analysis supporting the 16'-0" floor-to-floor height initially proposed; and

WHEREAS, in response, the applicant provided a revised financial analysis comparing the proposed building to buildings with: (i) a 14'-0" floor-to-floor height; and (ii) a 12'-0" floor-to-floor height, which concluded that the lower floor-to-floor heights were not feasible; and

WHEREAS, however, the Board noted that other buildings in the area have 13'-0" floor-to-floor heights and were marketable; and

WHEREAS, the applicant revised the proposal to lower the floor-to-floor height to the 13'-0" reflected in the current

proposal; and

WHEREAS, the Opposition contends that feasibility analysis is inadequate in that it fails to evaluate the use of the subject site as joint living work quarters for artists (JLWQA); and

WHEREAS, a response by the applicant notes that the subject site cannot be developed for JLWQA use because, in the subject M1-5B zoning district, JLWQA use is permitted as-of-right only in buildings constructed prior to December 15, 1961 and the proposed building would be newly constructed; and

WHEREAS, the Opposition additionally contends that the feasibility analysis did not demonstrate that the site is burdened by a hardship because it failed to demonstrate the infeasibility of the use currently existing on the site and of all alternative permissible uses; and

WHEREAS, the applicant submitted a financial analysis that indicated that current use of the site did not yield a reasonable return because the site is significantly underdeveloped; and

WHEREAS, the Board notes that an applicant is not required to examine each permissible use, particularly when there is evidence that certain uses are unlikely to provide a reasonable return given the property's physical characteristics (see Red Hook/Gowanus Chamber of Commerce v. BSA, 49 A.D.3d 749 (2d Dep't 2008)); 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, the applicant further represents that the proposed building of 12 dwelling units is limited in scope, and that the proposed unit size and residential use are consistent with the character of the area; and

WHEREAS, the applicant states that 22 of the 26 zoning lots on the subject block contain residential use or JLWQA use; and

WHEREAS, the applicant further states that nearby residential uses include a six-story residential building immediately to the east of the subject site and two five-story residential buildings to its immediate north on Spring Street; and

WHEREAS, the applicant represents that among the 105 zoning lots located within a 400-foot radius of the subject site, 76 of the zoning lots contain residential or JLWQA uses, including a number of apartment buildings along Mulberry Street, and converted loft buildings along Crosby, Broome, and Lafayette Streets; and

WHEREAS, the applicant states that the proposed unit size of 1,200 sq. ft. is consistent with the unit sizes permitted

MINUTES

by JLWQA regulations as well as by the provisions of ZR § 74-712 governing the minimum unit size in historic districts; and

WHEREAS, the applicant further represents that ground floor retail uses are consistent with the neighborhood character; and

WHEREAS, the applicant states that the height and bulk are compatible with the area, noting that the proposed building is lower in height than the adjacent building to its west, which has a height of approximately 140 feet; and

WHEREAS, the applicant further states that the proposed 5.0 FAR is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the proposed building envelope complies with the M1-5B/R7X Mixed Use District bulk requirements, except that the street wall height of 94 feet exceeds the 85-foot maximum permitted street wall height in an R7X district; and

WHEREAS, the applicant initially proposed a seven-story and penthouse building with floor-to-floor heights of 16'-0"; and

WHEREAS, the Board notes that the 400-foot radius diagram submitted by the applicant demonstrates that the area surrounding the subject site is largely characterized by five-story and six-story buildings; and

WHEREAS, during the hearing process, the Board asked the applicant to explore the feasibility of reducing the floor-to-floor heights to make the height of the building more compatible with that of buildings in the surrounding area; and

WHEREAS, in response, the applicant reduced the floor-to-floor height of each of the second through seventh floors of the subject building by three feet, thereby resulting in an 18-foot reduction in the building height; and

WHEREAS, the Opposition raised concerns that the proposed building would eliminate natural light and views from residential units in adjacent buildings with lot line windows; and

WHEREAS, at hearing, the applicant noted that the same lot line windows would be blocked by a conforming commercial development; and

WHEREAS, in a submission, the applicant further states that lot line windows cannot legally be used to satisfy light and air requirements and, therefore, the occupants lack a legally protected right to their maintenance; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's reduced height, bulk and design are compatible with other buildings in the neighborhood; and

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

WHEREAS, the applicant states that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the applicant submitted copies of 1959 and 1970 deeds for the conveyance of the subject site which establish that the lot has not been subdivided since December

15, 1961; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject building with knowledge of the restrictions on its development; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); furthermore, New York courts have consistently held that the purchase of land burdened by obsolete improvements is not a self-created hardship (see Citizens Sav. Bank v. Bd. of Zoning App., 238 A.D. 2d 874 (3d Dep't 1997); see generally, Fiore v. Zoning Bd. of App. of Town of Southeast, 21 N.Y. 2d 393 (1968); Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990)); 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 unique dimensions of the lot; and

WHEREAS, during the hearing process, the applicant reduced floor-to-floor heights of the second through seventh floors of the subject building by three feet, thereby resulting in an 18-foot reduction in the building height; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of 12 dwelling units is limited in scope; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Bureau of Environmental Planning and Analysis of the New York City Department of Environmental Protection ("DEP") has reviewed the following submissions by the applicant: a May 2008 EAS and a May 2008 Phase I Environmental Site Assessment Report; and

WHEREAS, the May 2008 EAS and a May 2008 Phase I Environmental Site Assessment Report specifically examined the proposed action for Hazardous Materials; and

WHEREAS, the May 2008 EAS determined that there could be potential hazardous materials impacts during construction and occupancy of the proposed residential building due to historical land uses and recommends that a Phase II Environmental Investigation be performed to identify measures to prevent possible adverse impacts related to such materials; and

WHEREAS, applicant proposes to submit a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan, (as approved by DEP the "Sampling Protocol") for the Project,

MINUTES

and to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol for the Project and, if such hazardous materials are found, to submit a hazardous materials remediation plan for the Project, including a health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, applicant proposes to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Sampling Protocol and Remediation Plan, if any, performed to the satisfaction of DEP; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance, applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") for the Project upon the occurrence of the following: (i) applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project, or (B) a Notice to Proceed ("Notice to Proceed") for the Project in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the Subject Property that permit grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance or construction of the superstructure for the Project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") for the Project in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection ("Notice of No Objection") for the Project in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, 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, in an M1-5B zoning district, a seven-story and penthouse residential building with 12 dwelling units and ground floor retail use, which is contrary to ZR §§ 42-10 and 42-14D(2)(b), *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 December 2, 2008"–(14) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a 12-unit residential building with ground floor retail use, a floor area of 23,830 sq. ft. (5.0 FAR), a street wall height of 94'-0", a total building height of 106'-0", and a rear yard of between 7'-4" and 8'-11" at the first floor and between approximately 31'-10" and 32'-2" above the first floor;

THAT, prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Project, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection, Notice to Proceed, or Notice of Satisfaction and shall comply with all DEP requirements to obtain such Notices; and

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Notice of No Objection, or Notice of Satisfaction; and

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

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; and

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

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

Adopted by the Board of Standards and Appeals, February 10, 2009.

163-08-BZ

CEQR #08-BSA-095K

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21 to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR §24-11 (floor area, FAR ad lot coverage), §24-34 (front yard), §24-35 (side yards), and §25-30 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 2022 Avenue M, southwest corner of the intersection of Avenue M and East 21st Street,

MINUTES

Block 7656, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 14, 2008, acting on Department of Buildings Application No. 3100132996, reads, in pertinent part:

- “1. Provides floor area greater than the maximum permitted pursuant to ZR Section 24-11;
2. Provides floor area ratio greater than the maximum permitted pursuant to ZR Section 24-11;
3. Provides lot coverage greater than the maximum permitted pursuant to ZR Section 24-11;
4. Provides front yards less than the minimum required pursuant to ZR Section 24-34;
5. Provides side yards less than the minimum required pursuant to ZR Section 24-35;
6. Provides less than the minimum number of parking spaces required pursuant to ZR Section 25-30;”

and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2 zoning district, a two-story and attic building to be occupied by a synagogue (Use Group 4) and accessory Rabbi’s residence, which does not comply with floor area, floor area ratio, lot coverage, front and side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, and 25-30; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with continued hearings on January 13, 2009 and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with conditions; and

WHEREAS, members of the community provided testimony in opposition to the proposal; and

WHEREAS, this application is being brought on behalf of Congregation Kol Torah, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject premises is located on the

southwest corner of the intersection of Avenue M and East 21st Street within an R2 zoning district and has a lot area of approximately 5,200 sq. ft.; and

WHEREAS, the subject site is occupied by a two-story detached single-family home which is proposed to be demolished; and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room and mechanical space on the cellar level; (2) a synagogue on the first and second floor; and (3) an accessory Rabbi’s residence on the attic level; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 9,840 sq. ft. of community facility floor area; an FAR of 1.89 (0.50 FAR is the maximum permitted); a lot coverage of 75 percent (60 percent is the maximum permitted); one front yard of 10’-0” on Avenue M and one front yard of 0’-6” on East 21st Street (two 15’-0” front yards are required); two 0’-6” side yards (two side yards with respective minimum depths of 15’-0” and 8’-0” are required); and one accessory parking space; and

WHEREAS, the proposal was revised during the hearing process; the current proposal provides for a synagogue building with approximately 9,583 sq. ft. of floor area, an FAR of 1.84, a lot coverage of 73 percent, one front yard of 10’-0” on Avenue M and one front yard of 1’-6” on East 21st Street; a complying 10’-8” side yard extending west from the East 21st Street frontage, and a 2’-6” side yard extending south from the Avenue M frontage; and two accessory parking spaces; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the current congregation of approximately 200 members and their children, and the future growth in the congregation’s membership; (2) to provide space for family study and other classes; (3) to accommodate life cycle events; and (4) to provide a residence for the Synagogue’s rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 2016 Avenue M consists of approximately 855 sq. ft. of floor area, which is inadequate to serve the current congregation and cannot be expanded; and

WHEREAS, the applicant represents that the proposed synagogue can accommodate the religious services and programs of the synagogue and will better accommodate the size of its congregation; and

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

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

WHEREAS, the applicant provided a submission

MINUTES

briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); and

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

WHEREAS, however, the applicant also represents that the width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject site has a width of 40'-0"; and

WHEREAS, the applicant represents that the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, yard parameters and parking requirements and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, the applicant provided plans indicating that an as-of-right development on this zoning lot would result in floor plates with a width of 17'-0" which would be narrow and inefficient and which would necessarily allocate a significant portion of both space and floor area toward circulation space; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of Synagogue, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

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

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the scale of the two- and- a-half-story homes that characterize the area; and

WHEREAS, the applicant further represents that the subject site is within 70 feet of an R7A district which is characterized by numerous residential and commercial buildings with floor area in excess of that proposed; and

WHEREAS, at hearing the Board asked the applicant to identify buildings in the surrounding area which are compatible with the scale and bulk of the proposed Synagogue; and

WHEREAS, the applicant identified seven buildings located within a 400-foot radius of the

subject site with FARs exceeding 2.08; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts would be minimal as most of the congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that 93 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, the applicant represents that this proposal would meet the requirements of a parking waiver for a locally-oriented house of worship at the City Planning Commission, pursuant to ZR § 25-35; and

WHEREAS, the Synagogue is located in an R2 zoning district, a waiver pursuant to ZR § 25-33 would be permitted if fewer than ten spaces were required; and

WHEREAS, the applicant represents that, based on the applicable formula and the rated capacity of the largest room of assembly, one parking space would be required, thereby qualifying the Synagogue for a waiver under ZR § 25-35; and

WHEREAS, at hearing, the Board raised concerns regarding a garage at the rear of the Synagogue which was proposed to be built to a distance of only six inches from the adjoining property on East 21st Street; and

WHEREAS, in response to the Board's concerns, the applicant revised the plans to remove the garage and accommodate two off-street parking spaces within an open yard area; and

WHEREAS, in response to fire and life safety measures recommended by the Fire Department, the applicant has agreed to install a sprinkler system and smoke detection system throughout the entire building that activates an audible alarm and will be connected to a Fire Department approved central station; and

WHEREAS, in response to concerns raised by the community board, the applicant agreed to maintain existing plantings on the Avenue M and East 21st Street frontages and to engage in no food preparation on the cellar level of the building; and

WHEREAS, the applicant additionally agreed to provide interior storage of trash until collection; and

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

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

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

WHEREAS, as noted above, during the hearing process the applicant revised the proposal to (i) eliminate a proposed garage, thereby providing a complying side yard to the south and eliminating the needed for a side yard waiver; (ii) to

MINUTES

increase the side yard extending west from East 21st Street; (iii) to reduce the overall floor area by 257 sq.; (iv) to decrease the lot coverage; and (v) to provide an additional accessory parking space; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA095K, dated October 16, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, a two-story and attic building to be occupied by a synagogue (Use Group 4) and accessory Rabbi's residence, which does not comply with floor area, floor area ratio, lot coverage, front and side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 25-30, *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 January 7, 2009" – Seven (7) sheets and "Received January 23, 2009" – Two (2) sheets and *on further condition*:

THAT the building parameters shall be: 9,583 sq. ft. of floor area, an FAR of 1.84, a lot coverage of 73 percent, one front yard of 10'-0" on Avenue M and a front yard of 1'-6" on East 21st Street; a 10'-8" side yard extending to a depth 40'-5"

from the East 21st Street frontage and a 2'-6" side yard extending to a depth of approximately 133'-0" from the Avenue M frontage; and two accessory parking spaces;

THAT the use shall be limited to a house of worship (U.G. 4) and an accessory Rabbi's residence;

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

THAT accessory uses shall not include the utilization of a room or other space for the operation of a business engaged in preparing or serving food or beverages for functions, occasions or events;

THAT alarmed smoke detection and sprinkler systems shall be installed throughout the entire building which are connected to a Fire Department approved central station, as indicated on the BSA-approved plans; and

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

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT existing plantings will be maintained on the Avenue M and East 21st Street frontages;

THAT landscaping shall comply with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 10, 2009.

198-08-BZ

CEQR #09-BSA-012M

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (a/k/a 268-276 Park Avenue South) west side of Park Avenue South at East 21st Street, Block 850, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 30, 2008, acting on Department of Buildings Application No. 110150559, reads in pertinent part:

“Proposed physical culture establishment on the subcellar, cellar, first, second, and second mezzanine floors is not permitted as-of-right in C6-4A zoning district and it is contrary to ZR 32-10. BSA special permit is required as per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4A zoning district, the establishment of a physical culture establishment (“PCE”) on the subcellar and cellar levels, the first and second floors, and the second floor mezzanine of an existing 12-story and penthouse mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009 and February 3, 2009, and then to decision on February 10, 2009; and

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

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

WHEREAS, a resident of the neighboring building testified in opposition to this application, citing concerns with sound attenuation; and

WHEREAS, the subject site is located at the northwest corner of the intersection at Park Avenue South and East 21st Street, in a C6-4A zoning district; and

WHEREAS, the site is occupied by a 12-story mixed-use residential/commercial building; and

WHEREAS, the PCE will occupy a total of 14,991 sq. ft., with 7,685 sq. ft. of area in the subcellar and cellar, 380 sq. ft. of floor area on the first floor, 6,126 sq. ft. of floor area on the second floor, and 800 sq. ft. of floor area on the second floor mezzanine; and

WHEREAS, the PCE will be operated as a “New York Health and Racquet Club;” and

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

WHEREAS, the proposed hours of operation are from 6:00 a.m. to 11:00 p.m., seven days per week; and

WHEREAS, at hearing, the Board asked the applicant to describe the sound attenuation measures to be undertaken

by the PCE; and

WHEREAS, in response, the applicant submitted a study which assessed the likelihood of sound/vibration transmission from the PCE to the upstairs apartments and to the condominium building located immediately to the west of the premises; and

WHEREAS, the sound attenuation study made specific recommendations to minimize any sound/vibration transmissions, including: (1) the installation of one-inch thick, double-glazed non-operable windows on the second floor and second floor mezzanine; (2) the installation of one-inch thick rubber flooring; and (3) use of a distributed speaker system with moderated volume units, rather than clustered loudspeakers in centralized locations; and

WHEREAS, the applicant represents that it will comply with the recommendations of the sound attenuation study; and

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

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

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

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

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

WHEREAS, at hearing, the Board asked the applicant to clarify why the second floor mezzanine is not listed on the building’s certificate of occupancy; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the second floor mezzanine was permitted under ZR § 54-41 due to the demolition of a former first floor mezzanine; and

WHEREAS, the Board neither approves nor disapproves the creation of a new second floor mezzanine, which is subject to approval by DOB; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA012M, dated July 28, 2008; and

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

MINUTES

Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4A zoning district, the establishment of a physical culture establishment on the subcellar and cellar levels, the first and second floors, and the second floor mezzanine of an existing 12-story and penthouse mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 21, 2009"-(5) sheets "Received December 31, 2008"-(1) sheet and "Received December 5, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 10, 2019;

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

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

THAT all signage shall comply with C6-4A zoning regulations;

THAT DOB shall review the second floor mezzanine for compliance with ZR § 54-41;

THAT all second floor and second floor mezzanine windows shall be non-operable, one-inch thick and double-glazed in accordance with the BSA-approved plans;

THAT one-inch thick rubber flooring shall be installed throughout the exercise rooms of the second floor and second floor mezzanine of the PCE;

THAT a distributed speaker system shall be used with moderated volume units;

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

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

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

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

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

THAT substantial construction be completed in

accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, February 10, 2009.

226-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district. PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 4, 2008, acting on Department of Buildings Application No. 302285569, reads in pertinent part:

"Proposed rear yard is contrary to ZR § 33-292;"

and

WHEREAS, this is an application under Z.R. §§ 73-50 and 73-03, to permit, on a site in a C8-2 zoning district abutting an R5 zoning district, the legalization of an enlargement to a one-story commercial building which encroaches on a required 30-foot rear yard, contrary to Z.R. § 33-292; and

WHEREAS a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on January 27, 2009, and then to decision on February 10, 2009; and

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

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

WHEREAS, several residents of the community testified in opposition to this application; and

WHEREAS, the site is located on the south side of Empire Boulevard, between Rogers Avenue and Bedford

MINUTES

Avenue; and

WHEREAS, the site has 120 feet of frontage on Empire Boulevard and a depth of 100 feet, and a total lot area of 12,000 sq. ft.; and

WHEREAS, the subject site is occupied by a one-story commercial building housing a building supply company (the "Company"); and

WHEREAS, the existing building has a floor area of 12,000 sq. ft. and a height of 15 feet; and

WHEREAS, the existing building is built to the rear lot line; and

WHEREAS, the subject site is located within a C8-2 zoning district that abuts an R5 zoning district to its rear; and

WHEREAS, pursuant to ZR §33-292, a rear yard at grade level with a minimum depth of 30 feet is required on a zoning lot within a commercial district that abuts a residential district; and

WHEREAS, therefore, the existing building does not comply with ZR § 33-292; and

WHEREAS, the applicant represents that the rear yard encroachment is a legal pre-existing condition; and

WHEREAS, on June 27, 2007, Permit No. 302285569-01-AL (the "Permit") was issued by the Department of Buildings ("DOB"), permitting a two-story vertical enlargement of the existing building; and

WHEREAS, pursuant to the Permit, the front portion of the existing building is being enlarged by two stories, to a height of 60'-0" from the front lot line extending south to a depth of 61'-5"; and

WHEREAS, the rear portion of the subject building, extending north by 38'-7" from the rear lot line (the "Rear Portion") is enlarged to a height of 33'-4"; and

WHEREAS, on July 22, 2008, DOB issued a Stop Work Order ("SWO") halting construction; and

WHEREAS, on November 10, 2008, DOB partially rescinded the SWO in order to allow construction to continue on the two-story enlargement to the front portion of the building; and

WHEREAS, the applicant proposes to legalize the vertical enlargement to the Rear Portion of the building to a height of 23 feet, thereby increasing the degree of non-compliance by eight feet; and

WHEREAS, under Z.R. § 73-50, the Board may grant a waiver of rear yard requirements set forth in Z.R. § 33-29 in appropriate cases; and

WHEREAS, the applicant represents that the amount of storage space in the existing building is inadequate and that the enlargement of the Rear Portion is necessary for the installation of additional storage racks; and

WHEREAS, the applicant further represents that the subject special permit is necessary to increase the capacity and operational efficiency of the Company; and

WHEREAS, the applicant states that the vertical enlargement will not increase the floor area of the Rear Portion of the building; and

WHEREAS, the applicant represents that the use of the Rear Portion of the building for storage will not create any fumes, odors, or other activities that would negatively

impact the adjacent residential zoning district, and there will be no openings within the masonry construction that would enable noise to be heard outside the building; and

WHEREAS, the applicant further represents that strict compliance with Z.R. § 33-292 could create a disadvantage for the adjacent residential properties in that the lack of storage space would result in a greater number of pickups and deliveries to and from the site, creating noise and particulates; and

WHEREAS, the applicant states that under ZR § 33-23, the proposed enlargement would be a permitted obstruction because it does not exceed one-story or 23 feet above curb level; and

WHEREAS, the applicant further states that in C1 through C7 zoning districts, ZR § 33-292 would permit such an obstruction, and that only in C8 zoning districts is such an obstruction not permitted; and

WHEREAS, the applicant represents that the additional restriction for the C8 zoning district is due to the more noxious uses permitted in the district; and

WHEREAS, the applicant further represents that the existing and proposed use is more analogous to uses permitted in a C7 zoning district; thus, it is appropriate for such a use to exist in this rear yard so long as it is limited to one-story and does not exceed 23 feet in height, as it is compatible with the adjacent residential uses; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, at hearing, the Board requested that the applicant provide information regarding the materials to be used for the façade of the Rear Portion of the building; and

WHEREAS, in response, the applicant submitted photographs of the materials to be used, which indicate that the façade will be compatible with adjacent residential buildings; and

WHEREAS, therefore the Board has determined that the application meets the requirements of Z.R. § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of Z.R. §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-50 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 to grant a special permit under Z.R. §§ 73-50 and 73-03, to permit, on a lot within a C8-2 zoning district abutting an R5 zoning district, the legalization of the proposed enlargement of a one-story commercial building, which will encroach within the 30-foot open area required along district boundaries coincident with rear lot lines of two adjoining zoning lots, contrary to Z.R. § 33-292, *on condition* that all work shall

MINUTES

substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 18, 2008" – (5) sheets; and *on further condition*;

THAT no mechanical equipment shall be located on the roof of the building within the 30-foot encroachment area;

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

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

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 10, 2009.

227-08-BZ

CEQR #09-BSA-022X

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to allow a 39,922 square foot enlargement to an existing non-profit hospital (UG 4); contrary to bulk regulations (§24-11, §23-633, §122-30). R8 District / Special Grand Concourse Preservation District.

PREMISES AFFECTED – Grand Concourse, East 173rd Street, Selwyn Avenue, Mt. Eden Parkway, Block 2823, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Carole Slater.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 27, 2008, acting on Department of Buildings Application No. 201038910, reads in pertinent part:

1. Proposed floor area (FAR) exceeds amount permitted by ZR 24-11.
2. Proposed lot coverage exceeds amount permitted by ZR 24-11.
3. Proposed front wall at east and north elevation exceeds height permitted by ZR 23-633”;

and

WHEREAS, this is an application under ZR § 72-21, to permit the proposed enlargement of a 17-story building for the Bronx-Lebanon Hospital Medical College to be occupied by community facility use (Use Group 4), on a site located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District, which does not comply with zoning requirements concerning floor area, lot coverage, and wall height, contrary to ZR §§ 24-11 and 24-633; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in the *City Record*, and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Bronx-Lebanon Hospital Center (the "Hospital"), a not-for-profit medical center and educational institution; and

WHEREAS, the subject site is located on the block bounded by East 173rd Street to the north, Selwyn Avenue to the east, Mt. Eden Parkway to the south, and the Grand Concourse to the west, with a total lot area of 53,368 sq. ft., and

WHEREAS, the site is currently occupied by a 17-story existing community facility (Use Group 4) building with a floor area of 338,952 sq. ft.; and

WHEREAS, the applicant proposes to extend the first through sixth floors of the existing building at the interior of its Zoning Lot, to extend the second through sixth floors at the northeast corner of the Zoning Lot and to extend the 11th floor at the eastern end of the Zoning Lot ("the proposed enlargement"); and

WHEREAS, the proposed enlargement increases the floor area of the existing building by 39,922 sq. ft.; and

WHEREAS, the subject site is located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District; and

WHEREAS, the applicant states that, pursuant to ZR § 122-30, the enlargement of a community facility building within the Special Grand Concourse Preservation District must comply with the bulk regulations of an R8X district; and

WHEREAS, Tax Lot 1 is divided by a zoning district boundary, pursuant to ZR § 122-70, the bulk regulations of the R8X district apply to the entire Zoning Lot; and

WHEREAS, the applicant proposes a total floor area of 378,874 sq. ft. (7.10 FAR) (the maximum permitted FAR in the R8X district is 6.0), and a street wall height of 92'-0" at the east and west elevations of the Hospital (a maximum of 85'-0" is permitted); and

WHEREAS, the proposed enlargement will have an average lot coverage of 74.4 percent (75 percent is the maximum permitted), and a lot coverage of 82.3 percent on a portion of the Zoning Lot which is subject to the corner lot regulations (a lot coverage of 80 percent is the maximum permitted in that portion of the Zoning Lot); therefore, a variance in the lot coverage requirements of ZR § 24-11 is

MINUTES

necessary to permit the proposed enlargement; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Hospital, which seeks to expand its existing facilities and enhance the quality of its medical services to better meet increasing community demand for health care; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Hospital: (1) to accommodate the increased demand for endoscopy, obstetrical/gynecological (“ob/gyn”), clinical/inpatient, ambulatory care, operating room, and radiology services; and (2) to provide additional space for nursing administration classrooms and storage; and

WHEREAS, as to patient demand, the applicant submitted information about the specific medical needs of the community, which encompasses the South Bronx neighborhoods of Highbridge-Morrisania, Hunts Point-Mott Haven, and the Central Bronx neighborhood of Crotona-Tremont, all with significant low income populations; and

WHEREAS, specifically, these communities are among the poorest in the nation and are federally designated as Medically Underserved Areas and Health Professional Shortage Areas; and

WHEREAS, the applicant states that more than one-third of the residents of these communities reported “fair” to “poor” overall health status, and notes that drug-related hospitalizations are three times higher than in New York City as a whole, mental health-related hospitalizations are 20 percent to 50 percent higher, and infant mortality rates are nearly 50 percent higher than the national average; and

WHEREAS, the applicant further states that the Hospital is the largest voluntary, not-for-profit health care system serving this community and that 231,500 individual patients were treated in 926,022 visits to the Hospital during 2006; and

WHEREAS, the applicant represents that the proposed enlargement will enable the Hospital to treat more than 76 additional patients per day and to provide additional nursing administrative classrooms and storage space; and

WHEREAS, the applicant further states that the services to be expanded must be integrated with the Hospital’s existing services, staff residences and support operations and that such services cannot be relocated to other locations within the Hospital due to a lack of space; and

WHEREAS, the applicant represents that as these services are provided within the existing main building, the Hospital must satisfy its programmatic needs by extending the first through sixth floors and the 11th floor of that building; and

WHEREAS, the applicant represents that the proposed enlargement requires the construction of additional floor area within the existing interior yard and over a loading dock on the northeast portion of the Zoning Lot, thereby necessitating a variance to the floor area and lot coverage requirements of ZR § 24-11; and

WHEREAS, the applicant further represents that the height of the sixth floor of the building to be enlarged is 12 feet, and the enlargement must be aligned with the floors of the existing building; and

WHEREAS, the applicant states that compliance with the street wall height regulations would limit the proposed sixth

floor to a ceiling height of five feet which would be insufficient to accommodate the classrooms or storage needs of the Hospital proposed for its sixth floor, and would not align with the existing building; and

WHEREAS, the applicant therefore seeks a variance of seven feet from the street wall height regulations of ZR §23-633 to permit construction of a sixth floor with a floor to ceiling height of 12 feet; and

WHEREAS, the applicant states that the need to enlarge the main Hospital building creates a practical difficulty and unnecessary hardship complying with the bulk requirements of the subject zoning district because the existing development on the Zoning Lot exceeds the permitted floor area, therefore any proposed expansion necessarily increases the degree of non-compliance with the zoning requirements; and

WHEREAS, the applicant concludes that the floor area, lot coverage, and wall height relief is required to meet the programmatic imperatives of the Hospital; and

WHEREAS, in analyzing the applicant’s waiver requests, the Board notes at the outset that the Hospital, as a non-profit educational institution, may use its programmatic needs as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (*see, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986) (hereinafter, “*Cornell*”)); and

WHEREAS, the Board notes that the Hospital is a New York State chartered educational institution providing a significant educational program; and

WHEREAS, the applicant states that the Hospital is an affiliated primary teaching hospital of the Albert Einstein College of Medicine of Yeshiva University offering 14 graduate programs with approximately 300 resident students; and

WHEREAS, accordingly, the Board finds it appropriate to give deference to the Hospital’s programmatic needs; and

WHEREAS, the Board observes that such deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of the Hospital; and

WHEREAS, specifically, as set forth above, the applicant represents that the proposed enlargement will enable the Hospital to treat more than 76 additional patients per day; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate the Hospital’s programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, based upon the above, the Board finds that the as-built condition of the Zoning Lot, when considered in conjunction with the programmatic need of the Hospital to

MINUTES

increase its services, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

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

WHEREAS, the applicant further represents that the bulk of the proposed project is compatible with that of the immediate area surrounding the subject site, noting that the area is developed with a mix of medium to high density institutional and residential buildings; and

WHEREAS, specifically, the applicant states that east of the subject site is a 20-story Hospital staff residence and a future nine-story ambulatory care facility and, to its north on Selwyn Avenue and East 173rd Street are six-story multiple dwelling buildings; and

WHEREAS, the applicant states the additional floor area will be distributed across the Zoning Lot thereby reducing the impact of the increased bulk; and

WHEREAS, the applicant further states that the proposed extensions of the first through sixth floors into the interior portion of the lot will have a minimal impact on the surrounding community, due to their limited height and location in the interior of the Zoning Lot; and

WHEREAS, the applicant represents that the impact on neighborhood character from the extension of the second through sixth floors on the northeast corner of the Zoning Lot will be similarly limited, given the height of the proposed enlargement and its location at least 60 feet from the nearest affected property; and

WHEREAS, the applicant further represents that the impact of the proposed enlargement on the surrounding area is also limited by its location on a block bounded by very wide streets, as the Grand Concourse to the west of the site has a width of 182 feet and Mount Eden Parkway, to its south, has a width of 185 feet; and

WHEREAS, the Board notes that because the proposed enlargement will be located at the intersection of two wide streets, the floor area and height non-compliances will have minimal impact and that the lot coverage waiver should have limited to no impact, given that it will enable the extension of the existing building into an interior portion of the subject site which is surrounded by other portions of the existing main building; and

WHEREAS, the proposed uses of the enlarged floor area conform to the use regulations for community facilities in the underlying R8 district; and

WHEREAS, based upon the above, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was

not created by the owner or a predecessor in title, but is the result of the programmatic needs of the Hospital and the constraints of the subject site; and

WHEREAS, the applicant represents that the proposed expansion will create a minimum degree of non-compliance with the floor area, lot coverage and street wall height regulations of the Zoning Resolution; and

WHEREAS, specifically, the applicant states that the proposed floor area ratio of 7.10 is approximately 18 percent above the permitted FAR, and

WHEREAS, the applicant notes that the Hospital's Zoning Lot is within an R8 district but because it is mapped within the Special Grand Concourse Preservation District, the maximum FAR is reduced from 6.5 to an FAR of 6.0; if the R8 zoning regulations were applied, the floor area would exceed the permitted floor area by only ten percent; and

WHEREAS, the proposed street wall height of 92 feet is only seven feet greater than the maximum street wall height permitted, and the total lot coverage of 74.4 percent is below the maximum permitted lot coverage, but since a portion of the site is deemed to be a corner with a lot coverage of 82.3 percent, the proposed lot coverage of the subject site is considered to be 2.3 percent greater than is permitted; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the proposed enlargement is designed to address the Hospital's programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA022X, dated December 4, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, 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

MINUTES

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 R8X zoning district, the proposed enlargement of a 17-story building for the Bronx-Lebanon Hospital Medical College to be occupied by community facility use (Use Group 4), on a site located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District, which does not comply with zoning requirements concerning floor area, lot coverage, and wall height, contrary to ZR §§ 24-11 and 24-633, *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 December 10, 2008" – (10) sheets; and *on further condition*:

THAT the enlarged building will have the following parameters: a total floor area of 378,874 sq. ft., and FAR of 7.10, an overall lot coverage of 74.4 percent and a lot coverage of 82.3 percent on the portion of the Zoning Lot located within 100 feet of the intersection of Mt. Eden Parkway and Selwyn Avenue and within 100 feet of the intersection of East 173rd Street and Selwyn Avenue; and a street wall height of 92 feet, as illustrated on the BSA-approved plans;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, February 10, 2009.

289-08-BZ

CEQR #09-BSA-046K

APPLICANT – Dennis D. Dell'Angelo, for Ephraim Nierenberg, owner.

SUBJECT – Application November 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141); side yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 966 East 23rd Street, west side of East 23rd, 220' north of Avenue J, Block 7586, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell'Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 30, 2008, acting on Department of Buildings Application No. 301760912, reads:

1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Section 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to ZR Section 23-46 and less than the required rear yard contrary to ZR Section 23-47;" and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, and side and rear yards, contrary to Z.R. §§ 23-141, 23-46, and 23-47; and

WHEREAS, a public hearing was held on this application on January 13, 2009 after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue I and Avenue J, in an R2 zoning district; and

WHEREAS, on July 26, 2005, under BSA Cal. No. 392-04-BZ, the Board granted a special permit to permit the enlargement of the existing single-family home; and

WHEREAS, the owner declined to build pursuant to the BSA-approved plans and instead has filed the subject application seeking approval of the revised plans; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,121 sq. ft. (0.53 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 2,121 sq. ft. (0.53 FAR) to approximately 3,862 sq. ft. (0.97 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4'-0" along the northern lot line (two side yards, each with a minimum width of 5'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing the Board questioned which

MINUTES

portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised plans showing the portions of the existing home that were being retained; 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 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 Z.R. § 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, and side and rear yards, contrary to Z.R. §§ 23-141, 23-46, 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 November 14, 2008"-(9) sheets and "January 23, 2009"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 3,862 sq. ft. (0.97 FAR); an open space ratio of 61 percent; a side yard with a minimum width of 4'0" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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,

February 10, 2009.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Charlotte Picot, George Megrath, Carole Keit, Nancy Jorisch, Ameilia M. Clancy and James Messemer.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 1:30 P.M., for continued hearing.

133-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Pilot Realty Co., owner.

SUBJECT – Application April 25, 2008 – Special Permit (§§73-48 & 73-49) to allow rooftop parking above the first floor of an existing one and two-story commercial building and waive limitation on number of vehicles in a group parking facility, located in an M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith.

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

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

MINUTES

223-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreisler Street, Block 7596, Lot 250, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for decision, hearing closed.

228-08-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman, Rabbi David Maslaton, Renell Maslaton, Rabbi David Cohen, Martin Shamula, Yaacov Benn Heim, Judy Shacalo, Aileen Nachun, Moshe Nachum, Ben Picciotto, Meyer David, Joey Nasar and David Ozelrey. For Opposition: Eric Palatnik, Stuart Klein, M. Cohen, Wadih Pharum, Sharon S., Samuel Levy, Joseph H. Setaro, Marie Poplaro, Anthony Giacobbe and Ed Jaworski.

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

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a)) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

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

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

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

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesey LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte, Wojciech Oktawiec and Kevin McCarthy.

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

291-08-BZ

APPLICANT – Moshe M. Friedman, for Eva Hershovic, owner.

SUBJECT – Application November 24, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area ratio (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3141 Bedford Avenue, West side 140' south of the intersection of Bedford Avenue & Avenue J, Block 7607, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and

MINUTES

Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-
Brown2

ACTION OF THE BOARD – Laid over to March 3,
2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.