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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

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

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

SPECIAL ORDER CALENDAR

74-49-BZ
APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owner.
SUBJECT – Application – Pursuant to (§ 11-411) of the Zoning Resolution to request an extension of the term of a variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.
PREMISES AFFECTED – 515 Seventh Avenue, Southeast corner of the intersection of Seventh Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.
COMMUNITY BOARD #5M

APPEALS CALENDAR

19-08-BZY
APPLICANT – Edward Lauria, P.E., for Nicholas Valentino, owner.
SUBJECT – Application January 18, 2008 – Extension of time to complete construction (§ 11-332) of a minor development commenced under the prior zoning district regulations. C4-1 SRD
PREMISES AFFECTED – 3871 Amboy Road, north side of Amboy Road, west of Greaves Avenue, Block 4633, Lot 294, Borough of Staten Island.
COMMUNITY BOARD #3SI

305-08-A
APPLICANT – NYC Economic Development Corp.
OWNER: Department of Small Business Services
SUBJECT – Application December 12, 2008 – for a variance of flood plain regulations under Sec. G107 of Appendix G. of the NYC Building Code.
PREMISES AFFECTED – East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane, Block 36, Lots 25 & 30, Borough of Manhattan.
COMMUNITY BOARD #1M

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

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

ZONING CALENDAR

177-07-BZ
APPLICANT – 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

99-08-BZ
APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Real Estate Development Company, owner.
SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot whtat does not meet the rear yard requirement (§ 23-47) in an R3-2 (SRD) zoning district.
PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.
COMMUNITY BOARD #3SI

169-08-BZ
APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.
SUBJECT – Application June 24, 2008 – Variance (§ 72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & § 111-104 (e)). M1-5 (TMU- Area B-2) district.
PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #1M

173-08-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.
SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.
PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.
COMMUNITY BOARD #2Q

258-08-BZ
APPLICANT – Rizzo Group, for Robert G. Friedman, owner; Mid City Gym and Tanning LLC, lessee.
SUBJECT – Application October 20, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar in a 41-story mixed-use building. The proposal is contrary to ZR § 32-10. C6-4 district.
PREMISES AFFECTED – 343-349 West 42nd Street, located on 42nd Street, mid-block between 8th Avenue and 9th Avenue, Block 1033, Lot 9, Borough of Manhattan.
COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, JANUARY 13, 2009
10:00 A.M.

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

SPECIAL ORDER CALENDAR

863-48-BZ
APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.
PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259th Street, Block 8678, Lot 1, Borough of Queens.
COMMUNITY BOARD #13Q
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for the continued use of an automobile repair establishment, which expired on November 25, 2008; and

WHEREAS, a public hearing was held on this application on November 18, 2008 after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of Union Turnpike between 259th Street and 260th Street, in an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 25, 1958 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 20, 1999, the grant was amended to permit the conversion of the gasoline service station to an automobile sales and repair establishment, and the term was extended for a term of ten years from the expiration of the prior grant, to expire on November 25, 2008; and

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

WHEREAS, at hearing, the Board requested the applicant to submit a revised signage analysis accurately reflecting all signage located on the site; and

WHEREAS, in response, the applicant submitted a revised signage analysis indicating that the frontage along 259th Street has a total of 43 sq. ft. of signage, and therefore does not comply with C1 zoning district regulations; and

WHEREAS, the applicant represents that due to the trapezoidal shape of the zoning lot, the frontage on 259th Street is only ten feet and allows a total of 30 sq. ft. of signage; and

WHEREAS, the applicant requests that the Board allow the additional 13 sq. ft. of signage on the 259th Street frontage due to the unique shape of the zoning lot; and

WHEREAS, the Board finds that the non-compliance with the C1 requirements is minimal and is created by the irregular lot shape and limited frontage on 259th Street; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* the resolution, dated November 25, 1958, so that as amended this portion of the resolution shall read: "to extend the term for ten years from November 25, 2008, to expire on November 25, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received September 25, 2008"-(1) sheet and "December 8, 2008"-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on November 25, 2018;

THAT a new certificate of occupancy shall be obtained by January 13, 2010;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 410118527)

Adopted by the Board of Standards and Appeals January 13, 2009.

26-02-BZ
APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.
SUBJECT – Application June 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C1-2/R3X zoning district, which expired on December 10, 2006.
PREMISES AFFECTED – 1680 Richmond Avenue, northwest corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES – None.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses, and a legalization of certain modifications to the previously approved site plan; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

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

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

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

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

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

WHEREAS, the applicant also seeks to amend the grant to legalize minor changes to site conditions on the previously approved plans, to reflect: (i) the conversion of a portion of the service building to an accessory convenience store; (ii) the paving of an area designated for landscaping at the southwest corner of the site; (iii) the placement of a waste oil tank at the northwest corner of the site; (iv) the placement of an air machine at the southwest corner of the site; and (v) the upgrading of the five existing 4,000 gallon gasoline storage tanks instead of the installation of four 10,000 gallon gasoline storage tanks; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the retail convenience store is contained within a completely enclosed building; and (ii) the retail convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, based upon its review of the record, the Board finds that the requested six-month extension of time to obtain a certificate of occupancy and amendment to the approved plans 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 December 10, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to July 13, 2009, and to permit the noted site modifications; *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 20, 2008"–(5) sheets; and *on further condition:*

THAT a certificate of occupancy shall be obtained by July 13, 2009;

THAT all signage shall comply with C1 zoning district regulations;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 510027515)

Adopted by the Board of Standards and Appeals January 13, 2009.

242-03-BZ
APPLICANT – Moshe M. Friedman, P.E., for Sion Maslaton, owner.
SUBJECT – Application November 18, 2008 – Extension of Time/waiver to obtain a Certificate of Occupancy which expired on January 13, 2008 and an Amendment to legalize the as-built condition of a previously granted Special Permit (§73-622) in an R3-2 zoning district.
PREMISES AFFECTED – 1858 East 26th Street, West side 285'-0" north of the intersection formed by East 26th Street and Avenue S. Block 6831, Lot 30, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Yosef S. Gottdiener.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy and an amendment to legalize the as-built condition of a single-family home previously granted a special permit; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, the site is located on the west side of East 26th Street, between Avenue R and Avenue S, in an R3-2 zoning district; and

WHEREAS, the site is currently occupied by a single-family home; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2004, when, under the subject calendar number, the Board granted a special permit to permit the enlargement of the single-family home; and

WHEREAS, the applicant represents that it exceeded the four-year deadline for completing substantial construction and obtaining a certificate of occupancy because it did not timely file the necessary special permit plans with the Department of Buildings ("DOB"); and

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

WHEREAS, the applicant also seeks an amendment to legalize the as-built condition of the site, to reflect that an approved second floor extension at the front of the house was not built; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy and amendment to the approved plans 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 January 13, 2004, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to July 13, 2009, and to permit the noted site modifications; *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 26, 2008"–(6) sheets; and *on further condition:*

THAT a certificate of occupancy shall be obtained by July 13, 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. 310115602)

Adopted by the Board of Standards and Appeals, January 13, 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: Kenneth H. Koons.

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

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: Jordan Most.

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

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, Frank Sellitto and Aldo Valdivesio.

ACTION OF THE BOARD – Laid over to February 3, 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

APPEARANCES –

For Applicant: Jordan Most.

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

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 –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

97-08-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Chesky Berkowitz.

LESSEE: Central UTA.

SUBJECT – Application April 18, 2008– To consider dismissal for lack of prosecution – Special Permit (§73-19) to allow legalization of existing community facility use, contrary to use regulations.

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

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to no-date, not-determined, off the dismissal calendar.

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non -compliances, increases the degree of existing non -compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code, regarding access and fire safety. R4 – Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

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

THE RESOLUTION:[1]

WHEREAS, the instant appeal initially came before the Board in response to a final determination by the Queens Borough Commissioner, dated August 24, 2006, stating that

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1 Headings are utilized only in the interests of clarity and organization.

the Department of Buildings (DOB) determined that New Building Permit No. 402074045 permitting construction of a single-family home at the subject site complied with all relevant sections of the Administrative Code and the Zoning Resolution and that no grounds existed for its revocation; and

WHEREAS, this appeal initially challenged DOB's decision not to revoke the above-referenced permit based on nine alleged violations of the Zoning Resolution and the Administrative Code; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in The City Record; and

WHEREAS, on April 27, 2007, DOB revoked New Building Permit No. 402074045 (the "Permit"), based on a finding of non-compliance with ZR § 23-45; thereafter, on May 15, 2007, the Board dismissed the instant appeal as moot; and

WHEREAS, on May 24, 2007, the owner of the challenged home filed an appeal with the Board, denominated BSA Cal. No. 140-07-A, challenging DOB's revocation of the Permit; and

WHEREAS, on June 18, 2007, the appellant commenced an Article 78 action in Queens Supreme Court seeking an order, inter alia: (i) declaring the Premises to be contrary to certain provisions of the Zoning Resolution; (ii) directing DOB to revoke the Permit based on all provisions of the Zoning Resolution which were allegedly violated; and alternatively (iii) directing BSA to conduct a hearing on the merits of DOB's decision not to revoke the Permit based on all the provisions of the Zoning Resolution allegedly violated; and .

WHEREAS, the public hearing on BSA Cal. No. 140-07-A was suspended pending a decision on an Article 78 petition filed in Queens Supreme Court seeking an order compelling the Board to subpoena witnesses and documents in the appeal (filed as Carroll v. Srinivasan, 110199/07); and

WHEREAS, on January 30, 2008, the Supreme Court ordered the Board to issue certain of the requested subpoenas requested (see Carroll v. Srinivasan, 110199/07, Jan. 30, 2008); and

WHEREAS, on April 21, 2008, the Supreme Court remanded BSA 229-06-A to the Board for findings concerning all alleged grounds for revocation of the permit and ordered that it be consolidated with BSA Cal. No 140-07-A (see Golia v. Srinivasan, Index No. 45941/07, Apr. 21, 2008) ("April 21, 2008 order"); and

WHEREAS, pursuant to the April 21, 2008 order, the instant appeal was heard with BSA Cal. No. 140-07-A on October 8, 2008, with a continued hearing on November 18, 2008, and then to decision on January 13, 2008; the record is separate for the respective appeals; and

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

WHEREAS, the subject site is located at 607 Bayside Drive, within an R4 zoning district; and

WHEREAS, the subject site is located on Block 16350, Lot 300, which is owned by the Breezy Point Cooperative, Inc. (the "Breezy Point Cooperative" and the "Cooperative"), a 403-acre privately-owned community incorporated in 1960; the Cooperative property is comprised of 2,834 separate residential plots leased to individual shareholders/proprietary tenants; and

WHEREAS, the subject site is located at the intersection of Bayside Drive, a mapped but unbuilt street, and a service road, which is unmapped and functions as a street pursuant to ZR § 12-10(d); and

WHEREAS, the subject site is an individually designated plot within the Breezy Point Cooperative of approximately 1,944 sq. ft. and is occupied by a single-family home constructed pursuant to the subject permit which is stated to be nearly complete; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of the Mrs. Rosemary Golia, a proprietary tenant of the Cooperative who occupies a single-family home at 2 Bayside to the rear of the subject site (the "appellant"); and

WHEREAS, DOB was represented by counsel in this appeal; and

WHEREAS, the appellant, the owner of the home at 607 Bayside Avenue (the "607 Homeowner"), and the Cooperative were represented by counsel in this appeal; and

WHEREAS, Mr. Joseph Sherry, the project architect of the contested building (the "project architect"), testified in opposition to the instant appeal; and

WHEREAS, Arthur C. Lighthall, General Manager of the Breezy Point Cooperative, testified in opposition to the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 10, 2006, DOB issued a demolition permit and on May 17, 2006 issued New Building Permit No. 402074045 (the "Permit") to the 607 Homeowner for the construction of a single-family home at 607 Bayside Drive; and

WHEREAS, on September 6, 2006, the appellant filed the instant appeal in opposition to DOB's approval of the Permit; and

WHEREAS, pursuant to a special audit, on February 27, 2007, DOB issued a ten-day notice of its intent to revoke the Permit based on the failure to provide the required front yard; and

WHEREAS, by letter dated April 11, 2007, DOB informed the project architect that, to avoid revocation of the Permit, the plans needed to be revised to reflect a complying front yard; and

WHEREAS, by letter dated April 27, 2007, DOB informed the project architect that the Permit was revoked; and

WHEREAS, subsequent to the revocation, Board staff informed the appellant that because the Permit had been revoked, as requested, the appeal was now moot and would be dismissed on May 15, 2007; and

WHEREAS, notwithstanding the revocation of the permit, the appellant made a submission, dated May 3, 2007, requesting that the Board not dismiss the case for the following reasons: (1) the basis for the revocation of the

New Building Permit was only one of the issues claimed in the appeal, and DOB's basis for the determination was flawed; (2) DOB failed to enforce the Zoning Resolution; (3) DOB made procedural errors; and (4) the appellant's property rights were denied; and

WHEREAS, on May 15, 2007 the Board dismissed the instant appeal; the resolution noted that DOB had revoked the Permit based on a finding of non-compliance of the front yard and that, although the revocation is only associated with one issue, the permit was revoked in full, thereby providing the remedy sought; and

WHEREAS, as discussed above, the appellant then commenced an Article 78 petition seeking inter alia a reopening of the instant appeal to hear the additional bases for the revocation of the permit (filed as Golia v. Srinivasan, Index No. 45941/07); and

WHEREAS, pursuant to the April 21, 2008 order rendered in the above-referenced case, the Board reopened the hearing on the instant appeal to make findings concerning all the alleged grounds for revocation of the permit; and

ISSUES PRESENTED

WHEREAS, the appellant contends that the issuance of the permit was invalid for the following reasons: (1) the lot area is contrary to the minimum lot area requirements of ZR § 23-32 and is not subject to the small lot exception of ZR § 23-33; (2) the premises violates the rear yard requirements set forth in ZR § 23-47; (3) the premises does not provide the required ten-foot front yard, per ZR § 23-45; (4) the setback of the terrace from Bayside Drive is contrary to the depth and level of the front yard as set forth in ZR §§ 23-45 and 23-42; (5) the required minimum distance between buildings is not provided per ZR § 23-711; (6) construction on the subject site violated GCL § 36 and Section 27-291 of the Administrative Code; (7) the premises is contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; (8) approval of the subject permit required prior certification from the City Planning Commission, per ZR § 62-71; and (9) the premises does not comply with the off-street parking requirements set forth in ZR § 25-21; and

WHEREAS, these nine arguments are addressed below; and

Compliance with minimum lot area requirements

WHEREAS, ZR § 23-32 requires a minimum of 3,800 square feet for a single-family detached residence in an R4 district, and

WHEREAS, the subject site is located in an R4 district and has a lot area of 1,944 sq. ft.; and

WHEREAS, the appellant contends that the subject lot therefore does not comply with minimum lot area requirements of ZR § 23-32; and

WHEREAS, a submission by the Cooperative states that, as an existing small lot, the premises is expressly exempted from the minimum lot area and width requirements under ZR § 23-33; and

WHEREAS, ZR § 23-33 states, in relevant part, that in an R4 district, a single-family or two-family house may be built on a zoning lot consisting entirely of a tract of land that (a) has less than the prescribed minimum lot area or lot width; and (b) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and

WHEREAS, DOB states that for the purposes of applying the Zoning Resolution, each plot within Breezy Point, as certified by the Breezy Point Cooperative, is accepted as a de facto "zoning lot" as defined by ZR § 12-10(a); and

WHEREAS, in a reconsideration dated February 15, 2005, the former Queens Borough Commissioner determined that the premises was an existing small lot prior to 1961, based on a certification by the Cooperative that the 607 Homeowner had owned the premises separately and individually since before the formation of the cooperative in 1960; and

WHEREAS, accordingly, DOB states that the subject lot complies with the provisions of ZR § 23-33 for existing small lots and does not violate ZR § 23-32; and

WHEREAS, the appellant additionally argues that the premises violates ZR § 23-32 because the Breezy Point Cooperative property is currently held in a single tax lot, Lot 300 in Block 16350, of which the premises in question is a part, and therefore the premises is not an existing zoning lot owned separately and individually from adjoining lots; and

WHEREAS, a submission by the Breezy Point Cooperative states that evidence demonstrating that the premises has been a separate individual plot of the Cooperative since before 1961 includes a 1946 topographical map, the plot card for the subject site, as well as a survey; and

WHEREAS, the Cooperative further states that the fact that adjoining lots are under its ownership does not alter the fact that the premises has been maintained as a separate and individual lot since prior to the adoption of the Zoning Resolution; and

WHEREAS, the appellant additionally argues that the subject site cannot qualify as an existing small lot under ZR § 23-33 because the size of the lot has changed; and

WHEREAS, the appellant states that the plot card filed with DOB indicates a zoning lot of 33.6' x 57.4' while the survey of the subject property filed together with the building permit application identifies the plot as 33.62' x 59.93'; and

WHEREAS, a submission by the Cooperative states the subject zoning lot has not been enlarged, reduced or reconfigured in any way since 1960 and points out that the appellant has offered no evidence establishing a reconfiguration of the zoning lot, other than identifying the discrepancy between the plot card and the survey filed with the permit application; and

WHEREAS, the Cooperative further states that the aforementioned discrepancy totals no more than two feet and likely resulted from the irregular shape of the subject lot and by the preparation of the original plot card by a person who was not a licensed surveyor; and

WHEREAS, the appellant further argues that the 2006 survey shows that the subject site was enlarged through the annexation of a 12'-0" corridor from the appellant's plot; and

WHEREAS, the Cooperative states that the 2006 survey is contradicted by the official survey of the appellant's premises, as well as by the plot cards for appellant's lot and that of the subject site; and

WHEREAS, the appellant states that Department of Buildings Directive No. 14-1967, dated May 16, 1967, establishes that "it is a legal impossibility" for the subject site to be owned "separately and individually" from all adjoining lots, as required for existing small lots under ZR § 23-33; and

WHEREAS, the Board finds that, contrary to the appellant's contention, Directive No. 14-1967 does not specifically apply to Breezy Point, further, that the appellant has provided no evidence that the subject lot was in common ownership with an adjacent lot; and

WHEREAS, the applicant also argues that the Building permit should not have been issued for the subject site because it was not owned separately and individually from all adjoining plots of land, citing Gherardi & Sons v Glass , 32 A.D2d 960 (1st Dep't 1969); and

WHEREAS, the Board notes that the Gherardi case is irrelevant to the instant appeal, inasmuch as the appellant has not established that the subject site was in common ownership with an adjacent lot or was combined or reconfigured after 1961; and

WHEREAS, based on the foregoing, the Board rejects the appellant's argument and finds that the subject lot does not violate the minimum lot area requirements of ZR § 23-32; and

Compliance with rear yard requirements

WHEREAS, the appellant contends that the subject site violates the rear yard requirements set forth in ZR § 23-47; and

WHEREAS, in pertinent part, ZR § 23-47 requires that a rear yard with a minimum depth of 30'-0" be provided on any zoning lot, except a corner lot; and

WHEREAS, however, in a February 15, 2005 reconsideration, the former Queens Borough Commissioner determined that the subject site is a corner lot and is therefore exempt from the rear lot requirements of ZR § 23-47; and

WHEREAS, the Cooperative also states that the premises is a corner lot under the Zoning Resolution because it is within 100 feet of the intersection of two streets, namely, Bayside Drive and an unmapped service road; and

WHEREAS, a "corner lot" is defined by ZR § 12-10 as a "zoning lot which adjoins the point of intersection of two or more streets and in which the interior angle formed by the extensions of the street lines in the direction which they take at their intersections with lot lines other than street lines, forms an angle of 135 degrees or less" and

WHEREAS, ZR § 12-10(d) defines a "street" as "any other public way that on December 15, 1961 was performing the functions usually associated with a way shown on the City Map;" and

WHEREAS, DOB states that the service road adjacent to the premises is a street under ZR § 12-10(d) based on findings that: (i) the service road existed prior to 1961; and (ii) the service road performs the functions usually associated with a street by providing access to homeowners and visitors to the adjacent parking area, and access to emergency vehicles and sanitation trucks to the surrounding homes; and

WHEREAS, the appellant contends that the service road is not a street based on holdings in In re Mayor of New York, 135 N.Y. 252 (1892); In re Eureka Basin, 96 N.Y. 42 (1884); Forest Hills Gdns. Corp. v. Baroth, 147 Misc. 2d 404 (Sup. Ct. 1990); and Hassinger v. Kline, 91 A.D. 2d 988 (2d Dep't 1983); and

WHEREAS, the Board finds that none of the cases cited by the appellant concern the question of whether the adjacent unmapped service road can be considered a "public way" that "perform[s] the functions usually associated with a way shown on the City Map;" and

WHEREAS, In re Mayor of New York and In re Eureka Basin concern whether a proposed use of land can appropriately be considered public so as to support being acquired by eminent domain; as DOB points out, these cases are not relevant to the instant appeal since the City is not seeking to acquire the service road by eminent domain; and

WHEREAS, DOB states that the Forest Hills Gdns. and Hassinger v. Kline cases, which concern whether private streets became public streets through an implied dedication or prescriptive easement, are equally inapplicable, since the agency is not arguing that the service road has been transformed into a public street under a theory of prescriptive easement; and

WHEREAS, the appellant contends that the service road cannot qualify as a street under ZR § 12-10 because it is private; and

WHEREAS, the Board note that the appellant is mistaken, because if a street under ZR § 12-10(d), were public, then the provision stating that it 'was performing the functions of a way shown on the City Map,' would make no sense, because, as a public street, it would necessarily be shown on the City Map; therefore, the Board concludes that a ZR § 12-10(d) street is expressly not a public street; and

WHEREAS, the Board further notes that a "covered pedestrian space" for which a floor area bonus was awarded or could be awarded is defined as a street by ZR § 12-10(e), notwithstanding its private ownership, so long as the space inter alia "functions as a street;" and

WHEREAS, moreover, the broad manner in which "street" is defined under ZR § 12-10 is further illustrated by its narrow exemption of, "a private road or driveway that serves only to give vehicular access to an accessory parking or loading facility, or to allow vehicles to take on or discharge passengers at the entrance to a building; and

WHEREAS, appellant has not argued that the contested service road serves only as a private driveway; and

WHEREAS, the Board finds that the service road in question is a street pursuant to ZR § 12-10(d) because it performs the functions of a street and existed prior to 1961; and

WHEREAS, DOB further states that the service road intersects with Bayside Drive at an angle of 135 degrees or less, thereby forming a corner lot at the subject site; and

WHEREAS. the appellant contends that the service road intersects with Bayside Drive at an angle of more than 135 degrees, based on a report by a licensed surveyor, and therefore the subject site cannot be considered as a corner lot, even if the service road were construed to be a street; and

WHEREAS, the Board finds the appellant's evidence to be neither conclusive nor compelling, as the 1946 map used as the basis for the surveyor's report depicts the entire Rockaway Point area in an 8 1/2" x 11" format and the scale of the contested service road, as represented, is so small that that the Board finds the accuracy of the purported measurement of its angle to be highly questionable; and

WHEREAS, the Board finds that the subject site is a corner lot which is exempt from the rear lot requirements of ZR § 23-47; and

Compliance with front yard requirements

WHEREAS, the appellant contends that the subject site does not provide the required ten-foot front yard, per ZR § 23-45; and

WHEREAS, the Board addresses this issue in the resolution for BSA Cal. No. 140-07-A, finding that the subject site does not comply with DOB's current interpretation of ZR § 23-45, but that, based on legal precedent, ambiguity of the provisions as applied to Breezy Point and evidence of consistent historic practice respecting the agency's application of ZR § 23-45 in Breezy Point, the Permit was not thereby invalidated; and

Depth and level of the front yard

WHEREAS, the appellant contends that the front yard setback and front yard level of the Premises from Bayside Drive is contrary to ZR §§ 23-45 and 23-42 because a terrace extends by 14'-8" into the required front yard at the subject site; and

WHEREAS, ZR § 23-45 requires a 20-foot front yard in an R4 zoning district and ZR § 23-42 prohibits the construction of any building or structure above ground level in any required yard; and

WHEREAS, DOB states that the terrace was built within the footprint of the prior non-complying building and is therefore a permitted reconstruction under ZR § 54-41; and

WHEREAS, ZR § 54-41 provides that a non-complying building may be demolished and reconstructed so long as the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance; and

WHEREAS, DOB further states that the terrace is not contrary to ZR § 23-42 because a terrace is a permitted obstruction per ZR § 23-44; and

WHEREAS, the Board rejects the appellant's argument and finds that the terrace is a permitted reconstruction per ZR § 54-41 and a permitted obstruction per ZR § 23-44; and

Required distance between buildings

WHEREAS, the appellant contends that the required minimum distance between buildings on the same zoning lot is not provided per ZR § 23-711; and

WHEREAS, under ZR § 23-711, a minimum distance is required of at least forty feet from the back wall of the subject site and the back wall of the appellant's site, if both homes have windows and are no more than 25 feet in height; and

WHEREAS, based on the record, the Board notes that the distance between the back walls of the two respective sites is less than 40 feet; and

WHEREAS, as stated above, DOB construes each individual plot within Breezy Point to be a separate "zoning lot" for purposes of applying the Zoning Resolution and, since only the home of the 607 Homeowner occupies the subject zoning lot, ZR § 23-711 is therefore not applicable to the subject site; and

WHEREAS, accordingly, the Board finds that the required minimum distance between buildings is not violated because ZR § 23-711 is inapplicable to the subject site; and

Construction on an unmapped street

WHEREAS, the appellant contends that the subject site violates Section 36 of the General City Law ("GCL") and Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, GCL § 36 provides that no certificate of occupancy can be issued for construction that is not fronting on an official mapped street; and

WHEREAS, Section 27-291 of the Administrative Code requires that at least eight percent of the total perimeter of a proposed building must front directly upon a legally mapped street; and

WHEREAS, DOB states that the subject premises fronts on Bayside Drive, which is a legally mapped street, and therefore GCL § 36 is inapplicable; and

WHEREAS, the Board notes that more than eight percent of the perimeter fronts on Bayside Drive, and therefore Section 27-291 of the Administrative Code of the City of New York is inapplicable; and

WHEREAS, the appellant argues that the subject home has eliminated the appellant's access to a mapped street and rendered it in violation of GCL § 36; and

WHEREAS, the Board notes that the appellant failed to explain how the proposed construction eliminates access to a mapped street and finds that the question of whether the appellant's property may now, or at a future time, consequently require an approval under GCL § 36 is not properly before it, as the validity of the Permit does not implicate the status of the adjacent property; and

WHEREAS, the appellant further contends that approval of the Permit was inconsistent with DOB technical memoranda based on opinions by the Corporation Counsel concerning construction in the bed of a mapped street; and

WHEREAS, the Board notes that a submission by the appellant includes an Opinion of the Corporation Counsel numbered 107,337 and stamped January 27, 1971, and DOB memoranda dated February 2, 1971, July 10, 1973, and July 20, 1970; and

WHEREAS, the Board further notes that the appellant failed to explain the relevance of the referenced technical memoranda and Corporation Counsel opinion to the issues raised by this appeal and therefore the Board is unpersuaded that the alleged inconsistency has any bearing on the subject site and its compliance with the Zoning Resolution; and

WHEREAS, the Board therefore rejects the appellant's argument that the subject site violates GCL § 36 of the General City Law and Section 27-291 of the Administrative Code of the City of New York; and

Required Distance between Septic Tanks

WHEREAS, the appellant contends that the premises are contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; and

WHEREAS, DOB states that on-site wastewater disposal systems within Breezy Point are required to meet Department of Environmental Protection standards "to the greatest extent feasible from an engineering point of view," and

WHEREAS, at a minimum, if space is available, the Department will require that a septic tank be installed to replace an existing cesspool; and

WHEREAS, DOB states that the owner of the subject site replaced the existing tank and that Department was satisfied that the application met the standards to the greatest extent feasible from an engineering point of view and that the approval to replace the septic tank at the premises was properly issued; and

WHEREAS, accordingly, the Board finds that the premises are not contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; and

Waterfront Certification

WHEREAS, the appellant contends that the proposed home requires a waterfront certification from the City Planning Commission, per ZR § 62-71 which has not been secured, and therefore such construction is non-compliant; and

WHEREAS, ZR § 62-711 provides, in relevant part, that no building permit shall be issued for any development on a waterfront block (as defined by the Zoning Resolution) without a certification by the Chairperson of the City Planning Commission that there is no waterfront public access or visual corridor requirement for the development; and

WHEREAS, DOB states that ZR § 62-71 exempts developments of one and two–family residences within detached or zero lot line buildings on existing zoning lots of less than 10,000 square feet in any district from the requirements of ZR §§ 62-711 and 62-712, provided such zoning lots are not included within an area subject to a waterfront access plan, pursuant to ZR § 62-80; and

WHEREAS, DOB further states that because the subject home is a detached, single-family residence in an existing zoning lot of 1,944 sq. ft. and is not included in an area subject to a Waterfront Access Plan, it is therefore exempt from City Planning certification requirement for visual corridors and zoning lot subdivisions; and

WHEREAS, accordingly, the Board rejects the appellant's argument and finds that no waterfront certification is required from the City Planning Commission under ZR § 62-71; and

Off-street parking requirements

WHEREAS, ZR § 25-21 requires that parking be provided for all "new residences constructed after December 15, 1961 . . . as a condition precedent to the use of such residences;" and

WHEREAS, ZR § 25-22 requires that one off-street parking space be provided for each new dwelling unit in an R4 zoning district; and

WHEREAS, the appellant contends that because an off-street parking space was not provided in connection with the new construction at the subject site, the subject premises does not comply with the requirements of ZR § 25-22; and

WHEREAS, the appellant contends that DOB improperly granted a "waiver" of the required off-street parking space; and

WHEREAS, DOB states that because the existing building was in existence prior to 1961 and did not comply with off-street parking regulations that, pursuant to ZR § 54-41, the reconstructed building is not required to comply with the subsequently adopted parking requirements; and

WHEREAS, ZR § 54-41 provides that a non-complying single-family home may be demolished and reconstructed without having to comply with the applicable district bulk regulations, so long as the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance; and

WHEREAS, DOB additionally points out that the emphasis of ZR § 25-21 is on use, and that because a residential use already existed at the premises, any residential use constructed cannot be considered a new residential use and therefore, parking is not required; and

WHEREAS, DOB further notes that group parking is available in Breezy Point to meet the parking needs of the 607 Homeowner; and

WHEREAS, the Board finds that because the pre-existing residential use at the subject site did not comply with off-street parking regulations, and the new construction merely maintains the pre-existing non-compliance without creating a new non-compliance or increasing the degree of non-compliance, that the 607 Homeowner is exempt from the parking requirements of ZR§ 25-22; and

WHEREAS, based on the foregoing, the Board rejects the appellant's arguments and finds that none of the grounds alleged for revocation have been established; and

WHEREAS, with respect to the appellant's argument that the front yard requirement of ZR § 23-45 is violated by the subject home, the Board notes again that DOB revoked the contested permit after finding that the appropriate

measure of a front yard setback under ZR § 23-45 is from the street line and that the front yard was thereby non-compliant; and

WHEREAS, BSA Cal. No. 140-07-A, also decided herewith on January 13, 2009, sought a reversal of that revocation and a reinstatement of the Permit; and

WHEREAS, as set forth in the referenced resolution, the Board concurs with DOB that the appropriate measure of a front yard setback under ZR § 23-45 is from the street line and finds the front yard of the subject site to be non-compliant; and

WHEREAS, the Board thereby denies the request for a reversal of the DOB decision finding non-compliance with ZR § 23-45; and

WHEREAS, in BSA Cal. No. 140-07-A, the Board also found pursuant, to its powers under Section 666(7) of the New York City Charter, that the record contained sufficient evidence of ambiguity in the language and prior application of ZR § 23-45 to support a reinstatement of New Building Permit No. 402074045; and

WHEREAS, the Board's determinations in BSA Cal. No. 140-07-A with respect to the compliance of the subject site with ZR § 23-45 and the validity of New Building Permit No. 402074045 apply equally to the instant appeal.

Therefore it is resolved that the instant appeal seeking a revocation of New Building Permit No. 402074045 based on the alleged violation of: (1) the minimum lot area requirements of ZR § 23-32; (2) the rear yard requirements of ZR § 23-47; (3) front yard requirements of ZR § 23-45; (4) the front yard depth and level requirements of ZR §§ 23-45 and 23-42; (5) the required minimum distance between buildings required by ZR § 23-711; (6) GCL § 36 and Section 27-291 of the Administrative Code of the City of New York concerning construction on an unmapped street; (7) the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; (8) the waterfront certification requirement of ZR § 62-71; and (9) the off-street parking requirements of ZR § 25-21, is denied.

Adopted by the Board of Standards and Appeals, January 13, 2009.

140-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 – Appeal seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 zoning district.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted in part and denied in part.

THE VOTE TO GRANT –

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

Negative:.....0

THE VOTE TO DENY –

Affirmative: 0

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

THE RESOLUTION:[1]

WHEREAS, the instant appeal comes before the Board in response to a letter of revocation of Application No. 402074045, dated April 27, 2007, from the Queens Borough Commissioner, which was accompanied by a letter from the Assistant General Counsel of the Department of Buildings ("DOB") stating the building permit was revoked due to the applicant's failure to provide a front yard at the premises, as set forth in ZR § 23-45; and

WHEREAS, this appeal challenges DOB's decision to revoke the above-noted application and subsequently issued building permit; and

WHEREAS, on September 6, 2006, the owner of the adjacent home to the rear, located at 2 Bayside, had earlier filed an appeal seeking to revoke the subject permit on the basis of nine alleged violations of the Zoning Resolution; the appeal by the neighbor is denominated BSA Cal. No. 229-06-A, and

WHEREAS, on May 15, 2007, the Board dismissed BSA Cal. No. 229-06-A as moot, based on the revocation of the permit by DOB due to a finding of non-compliance with ZR § 23-45; and

WHEREAS, a public hearing was held on this application on August 14, 2007 after due notice by publication in *The City Record*, with a continued hearing on November 20, 2007; and

WHEREAS, the public hearing on the instant application was suspended pending a decision on an Article 78 petition filed in Queens Supreme Court by the appellant seeking an order compelling the Board to subpoena witnesses and documents in the instant appeal (see Carroll v. Srinivasan, 110199/07, described below); and

WHEREAS, on January 30, 2008, the Supreme Court ordered the Board to issue certain of the subpoenas requested by the appellant in the instant appeal (see Carroll v. Srinivasan, 110199/07, Jan. 30, 2008); and

WHEREAS, pursuant to the January 30, 2008 order, the Board issued the subpoenas on September 26, 2008; on October 8, 2008, DOB moved to quash them; and

WHEREAS, on November 17, 2008, the Chair granted the motion to quash; the decision by the Chair, dated January 13, 2009, is within the record for the instant appeal; and

WHEREAS, the owner of the adjacent home also filed an Article 78 petition in Queens County Supreme Court challenging the Board's dismissal of BSA Cal. No. 229-06-

[1] Headings are utilized only in the interests of clarity and organization.

A and seeking an order: (a) declaring the Premises to be contrary to certain provisions of the Zoning Resolution; (b) directing DOB to revoke the permit based on all provisions of the Zoning Resolution which were allegedly violated; or, alternatively (c) directing the Board to conduct a hearing on DOB's decision to revoke of the permit based on only one of the Zoning Resolution provisions allegedly violated (see Golia v. Srinivasan, Index No. 45941/07); and

WHEREAS, on April 21, 2008, the Supreme Court remanded BSA 229-06-A to the Board for findings concerning all alleged grounds for revocation of the permit and ordered that the case be consolidated with the instant appeal (see Golia v. Srinivasan, Index No. 45941/07, Apr. 21, 2008) ("April 21, 2008 order"); and

WHEREAS, pursuant to the April 21, 2008 order, the instant appeal was heard together with BSA Cal. No. 229-06-A on October 8, 2008, with continued hearing on November 18, 2008, and then to decision on January 13, 2008; the record is separate for the respective appeals; and

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

WHEREAS, the subject site is located at 607 Bayside Drive, within an R4 zoning district; and

WHEREAS, the subject site is located on Block 16350, Lot 300, which is owned by the Breezy Point Cooperative, Inc. (the "Breezy Point Cooperative" and the "Cooperative"), a 403-acre privately-owned community incorporated in 1960; the Cooperative property is comprised of 2,834 separate residential plots leased to individual shareholders/proprietary tenants; and

WHEREAS, the subject site is located at the intersection of Bayside Drive, a mapped but unbuilt street, and a service road which is unmapped and functions as a street pursuant to ZR § 12-10(d); and

WHEREAS, the subject site is an individually designated plot within the Cooperative of approximately 1,944 sq. ft. and is occupied by a single-family home constructed pursuant to the subject permit which is stated to be nearly complete; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of Mr. Thomas E. Carroll, a proprietary tenant occupying a single-family home at 607 Bayside Drive (the "tenant"); and

WHEREAS, the applicant states that the tenant has occupied the subject property since 1960; and

WHEREAS, DOB was represented by counsel in this appeal; and

WHEREAS, the tenant, Mrs. Rosemary Golia, a neighbor residing at 2 Bayside and appellant in BSA Cal. No. 229-06-A (the "neighbor"), and the Breezy Point Cooperative were represented by counsel in this appeal; and

WHEREAS, Mr. Joseph Sherry, the project architect of the contested building (the "project architect"), testified in support of the instant appeal; and

WHEREAS, Arthur C. Lighthall, General Manager of the Breezy Point Cooperative testified in support of the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 10, 2006, DOB issued a demolition permit and on May 17, 2006 issued New Building Permit No. 402074045 (the "Permit") to the proprietary tenant for the construction of a single-family home at 607 Bayside Drive; and

WHEREAS, on September 6, 2006, the neighbor filed BSA Cal. No. 229-06-A appealing DOB's approval of the Permit; and

WHEREAS, pursuant to a special audit on February 27, 2007, DOB issued a ten-day notice of its intent to revoke the Permit based on the tenant's failure to provide the required front yard; and

WHEREAS, by letter dated April 11, 2007, DOB informed the project architect that, to avoid revocation of the Permit, the plans needed to be revised to reflect a complying front yard; and

WHEREAS, by letter dated April 27, 2007, DOB informed the project architect that the Permit was revoked; and

WHEREAS, On May 24, 2007, the instant appeal was filed challenging the revocation of the Permit; and

ISSUES PRESENTED

WHEREAS, the appellant contends that the Board should reverse the prior findings of DOB and reinstate the Permit because: (i) the proposed home complies with front yard requirements of the Zoning Resolution and is consistent with DOB's prior determination and precedents; (iii) DOB is equitably estopped from revoking the Permit; and (iii) the appellant has a vested right to continue construction under the Permit; and

WHEREAS, these three arguments are addressed below; and

Compliance with the Zoning Resolution

WHEREAS, on April 27, 2007, DOB revoked the Permit based on a finding of non-compliance with the front yard requirements of ZR § 23-45; and

WHEREAS, as set forth in ZR § 23-45, a ten-foot front yard must be provided in an R4 zoning district; ZR §12-10 defines a front yard as a "yard extending along the full length of the front lot line"; and

WHEREAS, the appellant states that DOB has consistently accepted that individual plots in existence before the 1961 adoption of the Zoning Resolution within the Breezy Point community are to be treated as separate record zoning lots under ZR § 12-10; and

WHEREAS, this fact has not been disputed by any party; and

WHEREAS, the appellant argues that the subject site complies with the front yard requirements of ZR § 23-45 because the distance between the zoning lot line and the proposed home exceeds ten feet and the historical practice of DOB has been to measure the front yard from the zoning lot line; and

WHEREAS, the Board notes that the zoning lot line, as established by the Breezy Point Cooperative, is located on the center line of the service road adjacent to the subject site; and

WHEREAS, DOB contends that the Zoning Resolution requires that the front yard be measured from the street line, rather than the zoning lot line, which in this case would be from the unmapped service road bordering the home; and

WHEREAS, ZR § 12-10 defines a front lot line as the "street line," which is defined as "a lot line separating a street from other land;" and

WHEREAS, DOB states that because the subject site was established as a lot of record existing on December 15, 1961, the street line may be located within the zoning lot and is not required to be bounded by a street (see ZR § 12-10(a)); and

WHEREAS, DOB further states that, in such cases, there is no front lot line separating a street from other land and the "street line" becomes the line within a zoning lot that separates an open street from other developable land within the zoning lot; and

WHEREAS, ZR § 12-10(d) defines a "street" as "any other public way that on December 15, 1961 was performing the functions usually associated with a way shown on the City Map;" and

WHEREAS, as the appellant established that the service road bordering the subject site is open and in use for access by homeowners, emergency and sanitation vehicles, DOB accepts the service road bordering the subject site as a street, pursuant to ZR § 12-10(d); and

WHEREAS, DOB contends that where the street is open and in use within a zoning lot, it is reasonable to interpret the street line as the line separating the open street from other land on a zoning lot; and

WHEREAS, the agency therefore concludes that the revocation of the Permit for a failure to provide a ten-foot front yard from the street line separating the open street from the rest of the zoning lot was proper and consistent with the Zoning Resolution; and

WHEREAS, a DOB submission indicates that measuring front yard setbacks from the street line is consistent with the manner in which front yard setbacks are determined in other cooperative associations in which a lot line falls within the bed of a street; and

WHEREAS, DOB also notes that the appellant regards the unmapped service road as a "street" pursuant to ZR§ 12-10(d), which would exempt the home from the rear yard requirement under ZR § 23-47, but does not regard it as a "street" for the purposes of determining compliance with the front yard requirements of ZR § 23-45 applying to a corner lot, which would require a front yard along the frontage on the service road, in addition to the front yard that is provided along Bayside Drive; and

WHEREAS, DOB states that the appellant's choice to define the service road as a street reinforces the legislative intent to provide a ten-foot front yard from the street line and/or street usage of the service road; and

WHEREAS, however, the applicant states that when the Permit was approved, DOB's practice was to measure the front yard from the zoning lot line; and

WHEREAS, the Board notes that throughout most of New York City, the street line of a property is coincident with its property line and that ZR §12-10 defines a front yard as a "yard extending along the full length of the front lot line"; and

WHEREAS, the Board further notes that DOB formerly measured the front yard of Breezy Point properties from a line construed to be a front lot line, and that doing so was consistent with the plain language of ZR § 12-10; and

WHEREAS, however, because the prior interpretation was not inconsistent with the plain language of ZR § 12-10, the interpretation is not irrational, notwithstanding the fact that the property line was not coincident with the street line and, indeed lay within the bed of a street; and

WHEREAS, the Board finds that the unusual manner in which Breezy Point properties are defined and formed – which inter alia gives tenants a leasehold interest in portions of private ways defined as streets, so that the property line and the street line are not coincident as is commonly the case– has led to an ambiguity in the application of ZR § 23-45; and

WHEREAS, the Board also finds that the previous interpretation of ZR § 23-45 as applied by DOB to the front yard setbacks in Breezy Point was not irrational or clearly erroneous based on the unique circumstances of this community; and

WHEREAS, DOB contends that the previous interpretation was erroneous and it that it may not be estopped from correcting its error citing Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282 (1988)); and

WHEREAS, the Board finds Parkview to be easily distinguishable from the instant case based on its facts; and

WHEREAS, Parkview concerned the mistaken issuance of a permit for the construction of a 31-story building on a site with a height limit of 19 stories, based on an erroneous interpretation of the Zoning Map; the Court held that DOB was not estopped from revoking the permit because the Zoning Map clearly showed the height limitation and "reasonable diligence by a good-faith inquirer would have disclosed the true facts and the bureaucratic error;" and

WHEREAS, in the instant case, there was no "bureaucratic error" in the Permit issuance, as it is uncontroverted that the front lot line was consistently construed to be coextensive with the zoning lot line for more than 40 years; and

WHEREAS, as evidence of this consistent prior policy, the appellant points to determinations by the Queens Borough Commissioner on February 27, 2006 and August 24, 2006; and

WHEREAS, the appellant states that, in both determinations, the Queens Borough Commissioner confirmed that the Permit complied with the front yard requirements of ZR § 23-45; and

WHEREAS, specifically, in the August 24, 2006 determination, the Deputy Borough Commissioner states that "[i]n approving job applications within the Breezy Point Cooperative, DOB has recognized the center line of a service road or walk as the property line. In the case of the captioned application, measuring the property line from the

center line of the adjacent service road satisfies the minimum ten foot front-yard setback requirement of ZR S 23-45. Based on my review of the above job applications, it is the position of the Department that the applicant complied with all relevant sections of the . . . Zoning Resolution;" and

WHEREAS, the appellant additionally cites to a letter of July 17, 2006 from the Enforcement Unit attorney to counsel for the neighbor, similarly stating that measuring the property line from the center line of the service road adjacent to the subject site satisfies the ten-foot minimum front yard setback requirement of ZR § 23-45; and

WHEREAS, DOB concedes that its past practice accepted the center line of the service road within the plots in Breezy Point as the property line from which to measure a front yard, but contends now that measuring the front yard from the middle of an open street was erroneous; and

WHEREAS, the Board notes that, as opposed to Parkview, where the error in interpretation would be obvious to anyone who consulted the zoning map, it would have been impossible, using any degree of "reasonable diligence" for the appellant to know that DOB would apply a new interpretation to his application, given the ambiguity of the Zoning Resolution language as it was applied in Breezy Point, and the consistent application of the prior interpretation under which his Permit was approved; and

WHEREAS, furthermore, it is well settled that "zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner" (see Mamaroneck Beach and Yacht Club, Inc., 53 A.D. 3d 494 (2d Dep't 2008)), and ambiguities are to be resolved in favor of the property owner (see Incorporated Vill of Saltaire v. Feustel, 40 A.D. 3d 586(2d Dep't 2007)); and

WHEREAS, in Mamaroneck Beach and Yacht Club, after the village's Director of Buildings concluded that the proposed development was a permitted use under the zoning code, an association of neighboring property owners appealed the "interpretation" and the Village subsequently enacted zoning amendments intended to prevent the proposed development; and

WHEREAS, based on facts which are somewhat similar to the instant case, the Court found that the zoning board was required to apply the original zoning provision to the proposed development, which would be nonconforming under the new statute; and

WHEREAS, furthermore, it is well settled that the Board has the discretion to interpret an ambiguous provision in a case where it is difficult to promulgate a "definitive ordinance" (see Matter of Arceri v. Town of Islip Zoning Bd. of Appeals, 16 A.D. 3d 411, 412 (2d Dep't 2005); see also Mamaroneck, 53 A.D.3d at 498; and

WHEREAS, the Board notes that the difficulty of promulgating and applying a "definitive" front yard setback provision to many Breezy Point properties is demonstrated by the fact that ZR §12-10 defines a front yard as a "yard extending along the full length of the front lot line", which in Breezy Point is construed to be a line which, in the appellant's case falls within the bed of the adjacent street; and

WHEREAS, in the appellant's case, measuring the front yard from that point is inconsistent with the Zoning Resolution requirement that a ten-foot front yard be provided from the street line; and

WHEREAS, DOB contends that if the Board finds that the current interpretation of ZR § 23-45 is consistent with its plain meaning and legislative intent that a ten-foot front yard be provided from the street line in the subject R4 zoning district, then the Board must correspondingly find that DOB's prior interpretation was "clearly erroneous" and that the Permit is invalid, based on In the Matter of Charles A. Field Del. Servs. (66 N.Y.2d 516 (1985)), and

WHEREAS, concomitantly, DOB argues that, if the Board found that both interpretations were valid, Field dictates that "the failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary, even though there is in the record substantial evidence to support the determination made"; (66 N.Y.2d at 518); and

WHEREAS, the Board agrees with DOB that the superseding interpretation of ZR § 23-45 is consistent with the plain meaning of the Zoning Resolution and with its legislative intent; and

WHEREAS, the appellant argues and the Board agrees that Field applies only to changes in departmental policy (see Lacroix v. Syracuse Exec. Air Serv., Inc., 8 N.Y.3d 348 (2007)) and is inapplicable to a case involving a contested zoning interpretation; and

WHEREAS, Field is not relevant to the instant appeal, the Board concludes that there is no bar to a finding that the prospective application of DOB's current interpretation of ZR § 23-45 is consistent with the legislative intent of the Zoning Resolution and, consequently, that the Permit was valid when issued; and

Equitable Estoppel

WHEREAS, the appellant also argues that DOB is equitably estopped from changing its interpretation of the Zoning Resolution based on the agency's long accepted and rational prior interpretation and the detrimental reliance it induced (see Reichenbach v Windward at Southampton, 80 Misc. 2d 1031, 1034, aff'd 48 A.D.2d 909 (2d Dep't 1976)); and

WHEREAS, the appellant states that for more than forty years, DOB measured the front yard setback of Breezy Point properties from a line construed to be a front lot line, consistent with ZR § 12-10, and that highly placed DOB personnel affirmed the validity of that interpretation; and

WHEREAS, the appellant contends that the tenant acted in good faith and in reliance on DOB's approvals of the Permit, and that his home was 95 percent completed when the Permit was revoked; and

WHEREAS, the appellant further contends that the alteration of the subject home to comply with the new interpretation of ZR § 23-45 would require extensive alterations at significant expense, thereby imposing a great hardship on the tenant; and

WHEREAS, although equitable estoppel may be

applied by a court upon a finding that it would be inequitable to allow the government to repudiate its prior conduct, the Board is an administrative body and is not empowered to provide an equitable remedy (see People ex rel. New York Tele. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd. of Sds. and Apps., 45 N.Y.2d 560, 565-567 (1978)); and

Vested Rights to Continue Construction

WHEREAS, the Appellant additionally argues that DOB instituted its change in policy and interpretation of the setback requirement of ZR § 23-45 subsequent to the issuance of the Permit, and asserts a vested right to complete construction and obtain a certificate of occupancy under the prior interpretation; and

WHEREAS, at hearing the Board asked the Appellant whether caselaw supported a vested rights determination based on a changed administrative interpretation; and

WHEREAS, the Appellant cites to the decision in Village Green Condo. Corp. v. Nardechia (85 A.D. 2d 692 (2d Dep't 1981)) for the proposition that DOB cannot refuse to issue a certificate of occupancy based on a changed interpretation; and

WHEREAS, for additional support for the argument that vested rights can apply to a changed administration interpretation of a regulation, rather than only to a change in zoning law, the appellant also cites to Kennedy v. Zng. Bd. of Apps (205 A.D.2d 629 (2d Dep't) (prior interpretation that a building was a legal non-conforming use could not be upset based on substantial evidence); Perrotta v. City of New York 122 Misc.2d 683 (N.Y. Sup. 1984) (vested right to complete a nonconforming building matures when substantial work is performed and obligations are assumed in good faith reliance on a permit legally issued); and Friend v. Feriola, 230 N.Y.S.2d 783 (1962), aff'd, 258 N.Y.S.2d TK (2d Dep't 1965);and

WHEREAS, DOB contends that vested rights cannot be established because the Permit was mistakenly issued based on an initial incorrect interpretation of ZR § 24-35 and is therefore invalid; and

WHEREAS, DOB maintains that a threshold issue in a vested rights case is that construction proceeded pursuant to valid permits (see Asharoken v. Pitassy, 119 A.D.2d 404 (N.Y. App. Div. 1986) ("[b]asic to traditional vested rights jurisprudence is the tenet that there is no right to reliance upon an invalid building permit"); and

WHEREAS, DOB asserts that the Permit was not valid when issued because it did not comply with ZR § 23-45 and, accordingly, rejects the Appellant's vesting claim; and

WHEREAS, the Board concurs that that vested rights may only be granted for work performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that the proper measurement of the front yard is from the street line, further, that such measurement is consistent with the City's application of the R4 zoning citywide and with the legislative intent of the Zoning Resolution when applied to a home adjacent to an unmapped street which is treated as a street under ZR § 12-10(d) for the purposes of defining the front yard setback; and

WHEREAS, however, notwithstanding the fundamental validity of DOB's current interpretation, the Board finds, based on the precedents discussed above, that the appellant has demonstrated sufficient ambiguity in the application of ZR § 23-45 to the subject site to establish the validity of the Permit when issued; and

WHEREAS, in light of the highly unique circumstances in this case, including the longstanding plausible interpretation of the Zoning Resolution requirements by DOB, as well as the substantial reliance by the property owner on that interpretation, the findings of the Board are limited to the instant appeal and the decision as set forth herein should not be construed to limit or constrain the authority of DOB concerning the determination of front yard setbacks under ZR § 23-45, or as precedent concerning the appropriate treatment of differing interpretations of the Zoning Resolution by DOB.

Therefore it is resolved that the instant appeal seeking a reversal of the April 27, 2007 determination of the Queens Borough Commissioner and accompanying letter, insomuch as the Board has determined that the appropriate measure of a front yard setback under ZR § 23-45 is from the street line, is denied in part, and insomuch as the Board has determined that the record contains sufficient evidence of ambiguity in the language and prior application of ZR § 23-45, is hereby granted in part and, pursuant to its powers under section 666(7) of the New York City Charter, the Board hereby reinstates New Building Permit No. 402074045.

Adopted by the Board of Standards and Appeals, January 13, 2009.

33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1st Lane, a/k/a 209-213 Brighton 1st Lane, north side of Brighton 1st lane, 63.19'W of Brighton 1st Street, Block 8670, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, January 13, 2009.

70-08-A thru 72-08-A
APPLICANT – Eric Palatnik, P.C., for TOCS Developers, Inc., owner.
SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.
PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of three detached two-family homes under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 73-08-A through 75-08-A, decided the date hereof, which also request a finding that the subject owner obtained a vested right to continue construction under the common law for the site located at 345A, 345B, and 345C Van Name Avenue; and

WHEREAS, the construction of the latter site is identical to, and occurred under the same contract as, the subject site, the Board finds the applicant's apportionment of half the total construction costs to each development to be a reasonable estimate of the costs; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with continued hearings on November 18, 2008 and December 16, 2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,011 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1194, Tax Lot 40 (215C Van Name Avenue), Tax Lot 41 (215B Van Name Avenue) and Tax Lot 42 (215A Van Name Avenue); and

WHEREAS, the applicant proposed to develop each prospective tax lot with a detached two-story, two-family dwelling (collectively, the "proposed development"); and

WHEREAS, on August 12, 2004 (the "Enactment Date") the City Council adopted the Lower Density Growth Management Text Amendments ("LDGMA"); and

WHEREAS, the proposed development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, on March 13, 2008, the applicant was issued a Stop Work Order by DOB, halting construction of the proposed development, due to the lapse of the building permits as a matter of law; and

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

WHEREAS, New Building Permit Nos. 500705766, 500705775 and 500705784 were issued to the owner permitting the construction of the subject homes by the Department of Buildings ("DOB") on June 29, 2004 (collectively, the "Permits"), prior to the Enactment Date; and

WHEREAS, a DOB submission further states that the Permits were lawfully issued and were effective until August 12, 2006; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the owner of the subject premises and were in effect until their lapse by operation of law on August 12, 2006; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including a "major development"; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit evidenced by an approved site plan showing all of the buildings; and

WHEREAS, the Board notes that the proposed development meets the definition for a major development; and

WHEREAS, pursuant to ZR § 11-311, DOB may vest a major development after completion of just one foundation within the development, provided permits have been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant states that one of the foundations on Zoning Lot 41 was complete as of the date the Permits lapsed by operation of law; and

WHEREAS, because the Permits were putatively vested under ZR § 11-331 prior to their lapse, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was September 12, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that before the lapse of the Permits, the foundations, framing, roofing, and installation of HVAC equipment for the three buildings of the proposed development were complete, and the drywall, plumbing and insulation were partially installed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, a timetable of the work performed, cancelled checks, and an affidavit of the project architect; and

WHEREAS, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the lapse of the Permits; and

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

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

WHEREAS, the applicant states that prior to the lapse of the Permits, the owner expended $429,387.41, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately $500,000 budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and credit card statements; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid $173,083.68 for excavation, installation of foundations, exterior and interior construction, and architectural and engineering fees prior to the lapse of the Permits; and

WHEREAS, the applicant states that the owner paid an additional $44,974.82 after the date the Permits lapsed, for costs that were committed to the development under irrevocable contracts prior to that date; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional $211,328.91 in connection with work performed at the site prior to the lapse of the Permits, which had not yet been paid; and

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

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

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

WHEREAS, the applicant states that under the LDGMA regulations, the two buildings located at 215B Van Name Avenue and 215C Van Name Avenue would have to be demolished and reconstructed for a complying development; and

WHEREAS, the applicant further states that it has expended an estimated $143,129 for the construction of each building on the subject site prior to the lapse of the Permits; thus, the demolition of the aforementioned two buildings would result in a loss of approximately $286,258 in project costs incurred prior to the lapse of the Permits; and

WHEREAS, the Board agrees that the need to redesign, the cost of demolition, the limitations of any complying development, and the $286,258 in actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

WHEREAS, accordingly, based upon its consideration

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit Nos. 500705766, 500705775, and 500705784, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted, and the Board hereby extends the time to complete the proposed development for two years from the date of this resolution, to expire on January 13, 2011.

Adopted by the Board of Standards and Appeals, January 13, 2009.

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED –354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of three detached two-family homes under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 70-08-A through 72-08-A, decided the date hereof, which also request a finding that the subject owner obtained a vested right to continue construction under the common law for the site located at 215A, 215B, and 215C Van Name Avenue; and

WHEREAS, the construction of the latter site is identical to, and occurred under the same contract as, the subject site, the Board finds the applicant's apportionment of half the total construction costs to each development to be a reasonable estimate of the costs; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with continued hearings on November 11, 2008 and December 16, 2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,009 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1198, Tax Lot 42 (345A Van Name Avenue), Tax Lot 43 (345B Van Name Avenue) and Tax Lot 44 (345C Van Name Avenue); and

WHEREAS, the applicant proposed to develop each prospective tax lot with a detached two-story, two-family dwelling (collectively, the "proposed development"); and

WHEREAS, on August 12, 2004 (the "Enactment Date") the City Council adopted the Lower Density Growth Management Text Amendments ("LDGMA"); and

WHEREAS, the proposed development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, on March 13, 2008, the applicant was issued a Stop Work Order by DOB, halting construction of the proposed development, due to the lapse of the building permits as a matter of law; and

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

WHEREAS, New Building Permit Nos. 500706364, 500706373, and 500706382 were issued to the owner permitting the construction of the subject homes by the Department of Buildings ("DOB") on June 29, 2004 (collectively, the "Permits"), prior to the Enactment Date; and

WHEREAS, a DOB submission further states that the Permits were lawfully issued and were effective until August 12, 2006; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the owner of the subject premises and were in effect until their lapse by operation of law on August 12, 2006; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including a "major development"; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit evidenced by an approved site plan showing all of the buildings; and

WHEREAS, the Board notes that the proposed development meets the definition for a major development; and

WHEREAS, pursuant to ZR § 11-311, DOB may vest a

major development after completion of just one foundation within the development, provided permits have been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant states that one of the foundations on Zoning Lot 42 was complete as of the date the Permits lapsed by operation of law; and

WHEREAS, because the Permits were putatively vested under ZR § 11-331 prior to their lapse, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was September 12, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that before the lapse of the Permits, the foundations, framing, roofing, and installation of HVAC equipment for the three buildings of the proposed development were complete, and the drywall, plumbing and insulation were partially installed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, a timetable of the work performed, cancelled checks, and an affidavit of the project architect; and

WHEREAS, the Board concludes that given the size of the site, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the lapse of the Permits; and

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

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

WHEREAS, the applicant states that prior to the lapse of the Permits, the owner expended $429,387.41, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately $500,000 budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and credit card statements; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid $173,083.68 for excavation, installation of foundations, exterior and interior construction, and architectural and engineering fees prior to the lapse of the Permits; and

WHEREAS, the applicant states that the owner paid an additional $44,974.82 after the date the Permits lapsed, for costs that were committed to the development under irrevocable contracts made prior to that date; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional $211,328.91 in connection with work performed at the site prior to the lapse of the Permits, which has not yet been paid; and

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

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

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

WHEREAS, the applicant states that under the LDGMA regulations, the two buildings located at 345B Van Name Avenue and 345C Van Name Avenue would have to be demolished and reconstructed for a complying development; and

WHEREAS, the applicant further states that it has expended an estimated $143,129 for the construction of each building on the subject site prior to the lapse of the Permits; thus, the demolition of the aforementioned two buildings

would result in a loss of approximately $286,258 in project costs incurred prior to the lapse of the Permits; and

WHEREAS, the Board agrees that the need to redesign, the cost of demolition, the limitations of any complying development, and the $286,258 in actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit Nos. 500706364, 500706373, and 500706382, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted, and the Board hereby extends the time to complete the proposed development for two years from the date of this resolution, to expire on January 13, 2011.

Adopted by the Board of Standards and Appeals, January 13, 2009.

103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to compete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331 to renew a building permit and extend the time for the completion of the foundation of a four-story and penthouse mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, the subject site is located on the south side of Grand Street between Bedford Avenue and Driggs Avenue; and

WHEREAS, the site has a frontage of 25 feet and a depth of 100 feet, and a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story and penthouse seven-unit residential building (the "Building") with commercial and community facility uses on the first floor; and

WHEREAS, the Building is proposed to have a total floor area of approximately 8,020 sq. ft. (3.2 FAR) and a total residential floor area of approximately 5,500 sq. ft. (2.2 FAR); and

WHEREAS, the site was formerly located within a C2-4 (R6) zoning district; and

WHEREAS, on December 5, 2007, New Building Permit No. 302308321-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building, and work commenced on December 6, 2007; and

WHEREAS, on March 26, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the Grand Street Rezoning, which changed the zoning district to C2-4 (R6B); and

WHEREAS, the applicant represents that the Building complies with the former C2-4 (R6) zoning district parameters; specifically, the proposed 3.2 FAR, base height of 44'-6", and total building height of 55'-0" were permitted; and

WHEREAS, because the site is now within a C2-4 (R6B) zoning district, the Building would not comply with the maximum FAR of 2.0, the maximum base height of 40'-0", or the maximum total building height of 50'-0"; and

WHEREAS, because the Building violated these provisions of the C2-4 (R6B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 26, 2008 halting work on the building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior C2-4 (R6) zoning district; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development,

such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold requirement in this application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, the record indicates that the Permit was issued to the owner by DOB on December 5, 2007 authorizing construction of the proposed Building; and

WHEREAS, by letter dated November 18, 2008, DOB stated that the Permit was lawfully issued on December 5, 2007; and

WHEREAS, DOB initiated a special audit review of the Permit on June 23, 2008, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on June 26, 2008, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, DOB approved revised plans on November 12, 2008 that addressed the objections identified by the audit and rescinded the letter of intent to revoke the Permit on November 17, 2008; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on December 5, 2007; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on December 6, 2007 and was completed on March 24, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor states that the entire site was excavated as of the Enactment Date; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundation was 85 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring and underpinning was complete and the majority of the concrete for the foundation was poured; and

WHEREAS, the applicant further states that approximately 75 percent of the first floor was complete as of the Enactment Date; and

WHEREAS, the Board notes that the Stop Work Order issued by DOB on March 26, 2008 also indicates that the foundation was approximately 85 percent complete as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the record indicates that the applicant spent $147,360, or approximately 94 percent, of the total estimated foundation cost of $157,360 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 302308321-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on July 13, 2009.

Adopted by the Board of Standards and Appeals, January 13, 2009.

213-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point

Cooperative Inc., owner; Thomas Durante, lessee.
SUBJECT – Application August 19, 2008 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street and not fronting on a mapped street contrary to General City Law Section 36. R4 zoning district.
PREMISES AFFECTED – 68 Hillside Avenue, south side of Hillside Avenue, 172.10' east of mapped Beach 178th Street, Block 16340, Lot 50, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Loretta Papa.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410095043 reads, in pertinent part:

"A1- The proposed enlargement is on a site located partially in the bed of a mapped street, therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 35 of the General City Law.

A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A3- The upgraded private disposal system is partially in the bed of a mapped street contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 24, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 25, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410095043 is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 19, 2008" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, January 13, 2009.

242-08-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Noreen Haggerty, lessee.
SUBJECT – Application September 26, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Section 36 of the GCL and partially in the bed of a mapped street contrary to Section 35 of the GCL. R4 zoning district.
PREMISES AFFECTED – 53 Beach 216th Street, east side Tioga Walk, 225.04' south of 6th Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Loretta Papa.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated September 17, 2008, acting on Department of Buildings Application No. 410113611, which reads in pertinent part:

"A1- The proposed enlargement is on a site located

partially in the bed of a mapped street therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 35 of the General City Law.

A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York;" and

WHEREAS, a public hearing was held on this application on January 13, 2009 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 23, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 25, 2008, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 17, 2008, acting on Department of Buildings Application No. 410113611 is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 26, 2008 " – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

Adopted by the Board of Standards and Appeals, January 13, 2009.

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 – None.

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

60-08-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.
SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102nd Street) contrary to General City Law Section 35. R6B (C1-4) zoning district.
PREMISES AFFECTED – 101-20 39th Avenue (formerly 101-20, 101-22 & 101-24 103rd Street, between 102nd and 103rd Streets, Block 1770, Lot 22, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Eric Palatnik.

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

120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.
SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.
PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Lyra Altman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ….....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 27, 2009, at 10 A.M., for decision, hearing closed.

261-08-BZY & 262-08-A
APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.
An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.
PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.
COMMUNITY BOARD # 7Q
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ….....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 27, 2009, at 10 A.M., for decision, hearing closed.

263-08-BZY & 264-08-A
APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.
SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.
An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.
PREMISES AFFECTED – 29-23 40th Road and 30-02 40th Avenue, Block 402, Lots 12 & 35, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Stuart Beckerman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ….....5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 3, 2009, at 10 A.M., for decision, hearing closed.

245-08-BZY
APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.
SUBJECT – Application October 23, 2008 – Extension of time to complete construction (11-331) of minor development commenced under the prior C2-2/R3-2+ district regulations. C1-1/R3X.
PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.
COMMUNITY BOARD #13Q
APPEARANCES –
For Applicant: Jordan Most.
For Opposition: Council Member Sanders, Richard Hellenbrecht, CB #13Q, Patrick Evans, Michael Dancan, Jacqueline Boyce, Dwight Johnson, Kamal F. Salsen, Elmer H. Blackborne, Donovan Richards, Leroy Gadsder, George A. Bradly, Marquez Claxton, Derrick M. Husbands, Mimose Nelson.
ACTION OF THE BOARD – Laid over to February 24, 2009, at 10:00 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 13, 2009
1:30 P.M.

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

ZONING CALENDAR

20-08-BZ
CEQR #08-BSA-046M
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.
SUBJECT – Application January 30, 2008 – Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Lyra Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 24, 2008, acting on Department of Buildings Application No. 104415571 reads, in pertinent part:

> "Proposed total floor area is contrary to Z.R. 43-12 in that it exceeds the maximum permitted FAR. Proposed height of street wall and setback exceeds the maximum permitted values per Z.R. 43-43;" and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to allow, in an M1-5 zoning district within the Special Tribeca Mixed Use District and Tribeca West Historic District, the proposed enlargement of a legal conforming Use Group 17 warehouse, which does not comply with requirements related to floor area, wall height, and setback, contrary to ZR §§ 43-12 and 43-43; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, the subject site is located on the northwest corner of the intersection at Beach Street and Collister Street, in an M1-5 zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District; and

WHEREAS, the subject site has a lot area of 5,000 sq. ft. and is occupied by a 30,000 sq. ft., six-story mixed-use building; the first, second, and third floors are occupied by a Use Group 3 pre-school, and the fourth, fifth, and sixth floors are occupied by a Use Group 17 warehouse; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 2003, when, under BSA Cal. No. 359-02-BZ, the Board granted a variance authorizing the ground floor and cellar of the premises to be occupied by the Use Group 3 pre-school; and

WHEREAS, the applicant represents that it has occupied the fourth, fifth, and sixth floors of the subject building since 1985 as a warehouse for the storage of seasonal decorations and live plants; and

WHEREAS, warehouse use is a permitted use in the subject zoning district; and

WHEREAS, the applicant now proposes a one-story enlargement that will add an additional 2,900 sq. ft. of floor area, to be located on the roof of the existing building; and

WHEREAS, the proposed enlargement will result in the following non-compliances: an FAR of 6.59 (the maximum permitted FAR is 6.0); a setback of 6'-2½" above the sixth floor of the Collister Street frontage (the minimum required setback is 20'-0"); and a height of seven stories (the maximum building height is six stories); and

WHEREAS, ZR § 73-53 requires a finding that: (i) the use of the premises is not subject to termination pursuant to ZR § 52-70; (ii) the use for which the special permit is sought has lawfully existed for more than five years; (iii) no residential use occupied the site within the past five years; (iv) no enlargement of the subject building pursuant to ZR §§ 11-412, 43-121 or 72-21 has been approved; and (v) the subject use is listed in Use Group 17, not Use Group 18; and

WHEREAS, through testimony and submission of supporting documentation, the applicant has established that the requirements of ZR § 73-53 have been met; and

WHEREAS, the applicant also demonstrated that the proposed enlargement constitutes less than 45 percent of the floor area occupied by the Use Group 17 use on December 17, 1987, which does not exceed 10,000 square feet; and

WHEREAS, in support of the above, the applicant submitted plans, an owner's affidavit, and invoices as proof that it occupied the requisite square footage in the building prior to December 17, 1987; and

WHEREAS, the applicant represents that the enlargement is entirely enclosed and that there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that the requirements of ZR § 73-53 are either satisfied, or are inapplicable to the instant application; and

WHEREAS, the applicant represents that the purpose

of the proposed enlargement is to allow for increased storage space to accommodate the growing needs of the business and provide a better office environment for the staff; and

WHEREAS, the applicant states that the enlargement will not increase the number of employees or the nature of the business, and therefore will not generate an increase in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states that the available parking is sufficient to accommodate the proposed enlargement because it will not generate an increase in vehicular traffic; and

WHEREAS, the applicant further states that the proposed enlargement will not generate any additional pickups or deliveries; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking and loading space to service the enlarged warehouse use; and

WHEREAS, the Board notes that there are no required side yards; and

WHEREAS, the applicant states that the proposed enlargement will not alter the essential character of the neighborhood, nor impair the future use or development of the surrounding area; and

WHEREAS, the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed enlargement, dated December 30, 2008; and

WHEREAS, the applicant notes that the proposed enlargement will be constructed entirely within the subject M1-5 zoning district; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a significant manufacturing and commercial presence, including a two-story commercial building that abuts the site to the west, and a five-story warehouse located on the subject block within 100 feet of the site; and

WHEREAS, the applicant further states that the scale and bulk of the proposed enlargement is consistent with the scale and bulk of other buildings in the surrounding neighborhood; and

WHEREAS, the applicant provided a 200-foot radius diagram, indicating that a 15-story condominium building is located immediately to the east of the site; and

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

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a Use Group 17 use on a site where such use is appropriate and legal; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-046M dated October 3, 2008 and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-53 and 73-03 for a special permit to allow, in an M1-5 zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District, the proposed enlargement of a legally conforming use Group 17 warehouse, which does not comply with floor area, setback, and number of stories, contrary to ZR §§ 43-12 and 43-43, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received January 30, 2008"– (13) sheets; and *on further condition*;

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

THAT there shall be no open uses on the site;

THAT all applicable fire safety measures will be complied with;

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 January 13, 2009.

46-08-BZ
CEQR #08-BSA-063M
APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.
SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to §24-11 (Floor area ratio and lot coverage) and §24-522 (front wall height, setback, sky exposure plane and number of stories). R6 district.
PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Lyra J. Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 17, 2008, acting on Department of Buildings Application No. 402313493 reads, in pertinent part:

"1. Proposed floor area ratio is contrary to ZR 24-11.
2. Proposed lot coverage is contrary to ZR 24-11.
3. Proposed height of the front walls, front wall setback & sky exposure plane (slopes) is contrary to ZR 24-522.
4. Proposed number of stories is contrary to 24-522;" and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R6 zoning district, a proposed six-story and mezzanine yeshiva which does not comply with FAR, lot coverage, front wall height, front wall setback, sky exposure plane, and number of stories, contrary to ZR §§ 24-11 and 24-522; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with continued hearings on November 18, 2008 and December 16, 2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, this application is being brought on behalf of Congregation Adas Yereim, a not-for-profit educational entity (the "Yeshiva"); and

WHEREAS, the subject premises is located on the southeast corner at the intersection of Bedford Avenue and Clymer Street, within an R6 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building provides for a six-story and mezzanine yeshiva with the following non-compliances: an FAR of 5.32 (the maximum permitted FAR is 4.8); a lot coverage of 86 percent (70 percent is the maximum permitted); a front wall height of 73'-8" (60 feet is the maximum permitted); no front wall setback on Bedford Avenue or Clymer Street (a minimum front wall setback of 15 feet on a wide street and 20 feet on a narrow street is required); and an encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a cafeteria, meat kitchen, and dairy kitchen in the cellar; (2) student bathrooms, staff offices, and storage in the cellar mezzanine; (3) a medrash, classrooms, and two administrative offices on the first floor; (4) classrooms and office space for teachers on the second through fifth floors; and (5) a computer laboratory, sewing room/library, and a multi-purpose room which can be used as a gymnasium or auditorium on the sixth floor; and

WHEREAS, the applicant states that the Yeshiva has operated for more than 40 years at a nearby site which is now inadequate to accommodate its current and projected enrollment; and

WHEREAS, further, the applicant states that it must relocate its operations because the Yeshiva building has been sold; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) physical education and recreation space; and (3) storage space; and

WHEREAS, the applicant states that the current enrollment is 725 students and the projected enrollment is approximately 760 students; and

WHEREAS, the applicant represents that a complying building could accommodate approximately 600 students; and

WHEREAS, the applicant further represents that the FAR and lot coverage waivers are necessary to provide the program space necessary to adequately serve its current enrollment and projected enrollment; and

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

WHEREAS, additionally, the applicant represents that

the front wall height, front wall setback, and sky exposure plane waivers are necessary to provide a sixth floor multipurpose room with adequate ceiling heights for its proposed use as a gymnasium and auditorium; and

WHEREAS, the applicant represents that a waiver of the required number of stories is necessary to enable the addition of a mezzanine for the storage of equipment above the classrooms on the sixth floor, while still providing the floor-to-ceiling height necessary for a viable gymnasium and auditorium on the sixth floor; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational 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 Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational 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, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, 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 Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district and that schools are located on the northeastern and southeastern corners of the intersection of Taylor Street and Bedford Avenue, one and two blocks from the subject site, respectively; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the Yeshiva are consistent with the bulk and height of the buildings in the surrounding area; and

WHEREAS, specifically, two 21-story multiple dwellings are located immediately opposite the Yeshiva on Bedford Avenue; and

WHEREAS, the applicant represents that the traffic impacts of the Yeshiva will be limited because approximately 300 students will take a private bus to and from the school, and many students will walk to the school; and

WHEREAS, the applicant further represents that the Yeshiva will ensure student safety by: (1) providing a bus loading and unloading area directly in front of the building which permits the students to be delivered to and picked up from the school entirely within the school's property, and (2) by stationing crossing guards at the corner of Bedford Avenue and Clymer Street to ensure the safety of students who walk to the Yeshiva; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated May 6, 2008, indicating that it has no objection to the proposed building and will prepare a school map with additional signage and markings upon approval of the application and construction of the building; 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 Yeshiva could occur on the existing site; and

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

WHEREAS, at hearing, the Board asked the applicant to explain the need for an additional 3,841 sq. ft. of floor area (0.52 FAR) beyond what is permitted under zoning district regulations; and

WHEREAS, specifically, the Board asked the applicant whether the program could be accommodated within a building with a complying FAR; and

WHEREAS, the applicant responded that the floor area was calculated based on the projected enrollment of 725 students, while a building with a complying FAR could accommodate no more than 600 students; and

WHEREAS, the applicant states that the additional floor area, in conjunction with the lot coverage waivers, allows for larger floor plates that would accommodate a greater number of students at the standard classroom size of 35 sq. ft. of floor area per student, for Head Start and Kindergarten classrooms, and 20 sq. ft. of floor area per student for other elementary classrooms; and

WHEREAS, at hearing, the Board requested that the applicant investigate the feasibility of either providing a side yard or a side setback above the permitted height along the eastern side of the building; and

WHEREAS, in response, a submission by the applicant represents that the proposal provides the standard one-to-one width-to-depth ratio for classrooms, and that providing a side yard or setback along the eastern side of the building would produce a layout with classrooms with disproportionate width-to-depth ratios, resulting in a less functional building that would not meet the programmatic needs of the school; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva 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 Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA063K, dated February 15, 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 R6 zoning district, a proposed six-story and mezzanine yeshiva, which does not comply with FAR, lot coverage, front wall height, front wall setback, sky exposure plane, and number of stories, contrary to ZR §§ 24-11 and 24-522, *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 November 6, 2008"– thirteen (13) sheets; and *on further condition*:

THAT the building parameters shall be: six stories and a mezzanine; a floor area of 39,361 sq. ft. (5.32 FAR); a lot coverage of 86 percent, a front wall height of 73'-8", no front wall setback, and an encroachment into the sky exposure plane;

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

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

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, January 13, 2009.

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112th Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Todd Dole.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated June 11, 2008, acting on Department of Buildings Application No. 410053720, reads in pertinent part:

> "Proposed building use is contrary to ZR section 22-00. Refer to the Board of Standards and Appeals for their review and resolution;"

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, a six-story and cellar hotel building which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with continued hearings on September 23, 2008, October 28, 2008, and November 25, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 3, Queens recommends approval of this application, subject to certain conditions; and

WHEREAS, Councilmember Hiram Monserrate recommends approval of this application; and

WHEREAS, the subject site is located within an R6 zoning district on the southwest corner of Astoria Boulevard and 112th Place; and

WHEREAS, the site is an irregularly shaped corner lot with approximately 152 feet of frontage on Astoria Boulevard and approximately 96 feet of frontage on 112th Place, and a total lot area of approximately 16,141 sq. ft.; and

WHEREAS, the site is currently developed with four vacant one-story and two-story commercial buildings formerly occupied by a gasoline service station and automotive repair

shop that will be demolished to make way for the proposed development; and

WHEREAS, the applicant proposes to construct a six-story hotel (UG 5); and

WHEREAS, the building is proposed to have a total floor area of approximately 48,423 sq. ft. (3.00 FAR), with 126 rooms and 31 accessory parking spaces; 17 spaces in the cellar and 14 spaces in a parking lot to the building's rear; and

WHEREAS, commercial use is not permitted in the subject R6 district, thus the applicant seeks a use variance to permit the proposed hotel use (UG 5); and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the contamination of the site's soil from a prior commercial use; (2) its location adjacent to heavily-traveled arterial roads; (3) its location on a street with numerous commercial uses; and (4) its irregular shape; and

WHEREAS, as to soil conditions, the applicant represents that soil tests reflect significant contamination by several chemical pollutants; and

WHEREAS, the applicant states that the site was used for approximately 60 years as a gasoline service station and automotive repair shop; and

WHEREAS, the Board notes that the previous use of the site as an automotive service and repair establishment predates the enactment of modern environmental standards and regulations; and

WHEREAS, due to documented spills and releases of petroleum products from the prior use, significant environmental remediation is necessary prior to the redevelopment of the subject property; and

WHEREAS, specifically, the applicant states that the premium costs associated with the remediation of the site are estimated at approximately $940,000, which reflects the need for tank removal, removal of contaminated soil, air monitoring and sub-slab ventilation and vapor barrier systems, among other remediation work; and

WHEREAS, the applicant states that the site's environmental conditions impede the development of the site for a conforming residential use; and

WHEREAS, as to the site's proximity to heavily-traveled roadways, the applicant states that the subject site is located on a six-lane divided thoroughfare and is directly to the south of an entrance ramp servicing the Grand Central Parkway and one block south of another entrance ramp servicing Northern Boulevard; and

WHEREAS, the applicant represents that the high volume of traffic and corresponding noise resulting from the site's proximity to these major roadways inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial uses in the surrounding area also diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map of the area indicating that, of the 31 lots fronting the south side of Astoria Boulevard to the east and west of the subject site, 22 are occupied by commercial uses while only two are occupied by residential uses; and

WHEREAS, the applicant states that the block immediately to the east of the subject site and a portion of the subject block fronting Northern Boulevard are established within a C2-4 overlay district and that both of these blocks are occupied by commercial uses; and

WHEREAS, the applicant represents that the infeasibility of the use of the subject site for a complying development is further evidenced by the discounted sales prices of a new residential development immediately to its west; and

WHEREAS, as to the site's irregular shape, the applicant represents that the depth of the site varies from approximately 95 feet to 125 feet, further constraining a conforming residential development; 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 which analyzed a complying residential development; and

WHEREAS, the feasibility study concluded that a complying residential development would generate a negative rate of return due to the site's constraints, including its proximity to the Grand Central Parkway and the significant premium costs related to environmental remediation; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning 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, specifically, the proposed hotel complies with the FAR, height, setback, and rear yard requirements for a Quality Housing building in the subject zoning district; and

WHEREAS, the applicant further states that the pending North Corona rezoning will change the subject zoning district from R6 to R6A and that the proposed building will comply with FAR, height, setback and rear yard regulations of the new contextual R6 district; and

WHEREAS, the applicant represents that the proposed use is consistent with the surrounding area, which is characterized by an abundance of commercial uses; and

WHEREAS, as noted above, the block immediately to the east of the subject site and the portion of the subject block fronting Northern Boulevard are within a C2-4 overlay district and both blocks are occupied by commercial uses; and

WHEREAS, the applicant states that, pursuant to ZR § 32-14, the proposed hotel use would be permitted as-of-right within the adjacent C2-4 overlay district, due to its location within a 1,000-foot radius of the entrance to the Grand Central Parkway; and

WHEREAS, the applicant also represents that the

proposed hotel use would be more compatible with the residential district than the prior automotive use; and

WHEREAS, the Board has reviewed the map and photos of the immediate area submitted with this application, and concludes that the proposed use of the building will be compatible with the existing conditions in the surrounding neighborhood; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions, specifically the site's contaminated soil conditions and proximity to major arterial roadways; and

WHEREAS, the Board directed the applicant to provide a financial analysis for a smaller hotel; and

WHEREAS, in response, the applicant provided a financial analysis of hotel with 76 rooms and an FAR of 2.0, which did not provide a reasonable rate of return; and

WHEREAS, the applicant represents that the significant premium costs related to environmental remediation constrain the smaller hotel from realizing a reasonable return; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; 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 pursuant to 6 NYCRR, Part 617; 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. 08BSA083Q, dated November 24, 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, in connection with the North Corona Rezoning approved by the City Council on September 17, 2003, an "E" designation for hazardous materials was mapped on the subject site shown on the City Zoning Map panel 10b; and

WHEREAS, the Department of Environmental Protection ("DEP") and the New York State Department of Environmental Conservation ("DEC") have reviewed a September 2008 Phase II Subsurface Investigation Report, Remedial Action Plan, and Construction Health and Safety Plan for the subject site, which were completed as a result of the "E" designation imposed on the site; 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, with the implementation of the requirements of the "E" designation, no significant adverse impacts would occur, and 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 based on the implementation of investigation and remediation activities required in connection with the "E" designation under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6 zoning district, the proposed construction of a six-story hotel building (UG 5) which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *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 June 30, 2008" – (13) sheets; and *on further condition*:

THAT street trees shall be planted in accordance with ZR § 28-12;

THAT all signage shall comply with C1 zoning district parameters;

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

THAT construction shall be completed 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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; 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, January 13, 2009.

135-08-BZ
CEQR #08-BSA-024Q

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The

proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.
PREMISES AFFECTED – 71-52 172nd Street, northwest corner of the intersection of 73rd Avenue and 172nd Street, Block 6959, Lot 1, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Richard Lobel.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Queens Deputy Borough Commissioner, dated December 2, 2008, acting on Department of Buildings Application No. 402652134 reads, in pertinent part:

"1. The proposed front yards of 10' & 5' are contrary to ZR 24-34.
2. The proposed number of parking spaces does not comply with ZR 25-31.
3. The proposed FAR of 0.65 does not comply with ZR 24-111;" 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 one-story and mezzanine building to be occupied by a synagogue (Use Group 4), which does not comply with front yard, FAR, and parking requirements for community facilities, contrary to ZR §§ 24-34, 24-111, and 25-31; and

WHEREAS, a public hearing was held on this application on September 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 9, 2008, and then to decision on January 13, 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 8, Queens, recommends approval of the application, subject to certain conditions; and

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

WHEREAS, this application is being brought on behalf of the Fresh Meadows Bukharian Synagogue, Inc., a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject site is located on the northwest corner of the intersection at 73rd Avenue and 172nd Street within an R2 zoning district and has a lot area of approximately 4,940 sq. ft.; and

WHEREAS, the subject site is currently occupied by a one-story detached residential building with a floor area of 1,294 sq. ft. and a two-story garage; and

WHEREAS, the proposed building provides for a one-story and mezzanine synagogue with the following parameters: a floor area of 3,317 sq. ft. (the maximum permitted floor area is 2,470 sq. ft.), an FAR of 0.67 (the maximum permitted FAR is 0.5); a front yard of 5'-0" along the southern lot line and a front yard of 10'-0" along the eastern lot line (two front yards with minimum depths of 15'-0" each are required); and no parking spaces (14 are required); and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room at the cellar level; (2) a religious sanctuary on the first floor; and (3) a women's balcony on the mezzanine level; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate its growing congregation; and (2) to provide a separate space for men and women during religious services; and

WHEREAS, the applicant states that the congregation has worshipped at the subject site since 2006; and

WHEREAS, the applicant represents that the size, layout and design of the current synagogue, which was constructed as a one-family home, is inadequate to serve its congregation of approximately 264 members; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine; and

WHEREAS, the applicant represents that a complying building would be inadequate to accommodate more than 80 congregants and would not permit the creation of a women's balcony on the mezzanine level; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the first floor sanctuary and a women's balcony; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; 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, 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, 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 is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the FAR waiver is minimal and that the waivers for the front yards and FAR are necessary to permit a building that can accommodate the size of the congregation; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the Synagogue are consistent with the bulk and height of the one and two-story homes that characterize the area; and

WHEREAS, at hearing, residents of the community raised concerns regarding access to parking and whether the site would be used as a catering hall; and

WHEREAS, as to traffic impacts and parking, a submission by the applicant indicated that approximately 75 percent of the congregants lived within three-quarters of a mile from the Synagogue; and

WHEREAS, the applicant represents that traffic impact would be minimal as most congregants live near enough to walk to services and are not permitted to drive to worship services on religious holidays or on the Sabbath; and

WHEREAS, the applicant further represents that the subject site will not be used for commercial catering, thereby further limiting traffic demand; and

WHEREAS, in response to concerns raised by the Community Board, the applicant has also agreed to limit its hours of operation to no later than 10:00 p.m.; 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, the Board 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. 09BSA024Q, dated September 10, 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 one-story and mezzanine building to be occupied by a synagogue, which does not comply with front yard, FAR, and parking requirements for community facilities, contrary to ZR §§ 24-34, 24-111, and 25-31, *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 April 30, 2008" – (1) sheet and "Received December 8, 2008" – (7) sheets and *on further condition*:

THAT the building parameters shall be: a floor area of 3,317 sq. ft., an FAR of 0.67; a front yard of 5'-0" along the southern lot line; a front yard of 10'-0" along the eastern lot line; and no accessory parking;

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

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT garbage shall be stored in the building except when in the designated area for pickup;

THAT the hours of operation shall not extend past 10:00 p.m.;

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

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

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, January 13, 2009.

155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 20, 2008, acting on Department of Buildings Application No. 310113588, reads in pertinent part:

> "Proposed enlargement of two-story one-family dwelling in Use Group 1 in R3-1 zoning.
>
> 1. Proposed floor area ratio contrary to ZR 23-141(a).
> 2. Proposed open space contrary to ZR 23-141(a).
> 3. Proposed lot coverage is contrary to ZR 23-141.
> 4. Proposed rear yard is contrary to ZR 23-47. Minimum required: 30'. Proposed: 20';" and

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

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, with continued hearings on October 7, 2008, November 18, 2008, and December 16, 2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, residents of the Manhattan Beach community provided testimony in opposition to the proposal (hereinafter, the "Opposition"); and

WHEREAS, the subject site is located on the west side of Beaumont Street, between Oriental Boulevard and Esplanade; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family residence with a floor area of approximately 2,521 sq. ft. (0.63 FAR); and

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

WHEREAS, the applicant seeks an increase in floor area from approximately 2,521 sq. ft. (0.63 FAR) to approximately 3,992 sq. ft. (0.99 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, including the attic allowance); and

WHEREAS, the proposed enlargement provides approximately 44 percent of lot coverage (a maximum of 35 percent is permitted) and approximately 56 percent of open space (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement decreases the non-compliance of the rear yard, from an existing depth of 9'-6" to a proposed depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board asked for drawings clarifying the amount of the existing building to be retained as a result of the enlargement; and

WHEREAS, in response, the applicant provided revised plans indicating the portions of the existing building that will be retained; and

WHEREAS, at hearing, the Opposition provided testimony claiming that the proposal would result in the demolition of the existing building and that the proposed building was not an enlargement but a new building; and

WHEREAS, the Board has reviewed the information provided by the Opposition and the applicant and concludes that the portion of the building to be retained is sufficient to qualify as an enlargement; and

WHEREAS, at hearing, the Board raised concerns about whether the proposed enlargement complies with a Department of Buildings ("DOB") pre-consideration regarding the proposed building envelope, particularly in regards to Zoning Resolution regulations pertaining to perimeter wall height; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the perimeter wall height of the proposed enlargement is in compliance with the Zoning Resolution and the proposed building envelope adheres to the DOB pre-consideration; and

WHEREAS, the Board notes that the size and scale of the proposed building, including: (1) the proposed FAR of 0.99; (2) the proposed height of 35'-0"; (3) the proposed front yard of 15'-4"; and (4) the proposed increase in the rear yard from the existing 9'-6" to 20'-0", is consistent with

the character of the neighborhood; and

WHEREAS, at hearing, the Opposition provided a photo-board depicting existing homes in the area, claiming that the proposal would alter the essential character of the neighborhood; and

WHEREAS, the Board was not persuaded by the limited number of photographs provided as proof that the proposal would alter the essential character of the neighborhood; and

WHEREAS, further, the photographs included those of several homes that were similar to the bulk and height of the proposed home; and

WHEREAS, the Board notes that within Manhattan Beach it has granted several special permits that allowed similar zoning parameters, specifically in regards to FAR; and

WHEREAS, finally, the Board notes that unlike many of the homes granted special permits, the subject home has complying side yards and is increasing the existing rear yard from 9'-6" to 20'-0", and no waivers are requested or granted for perimeter wall and building height; 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 ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area ratio, lot coverage, open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 2, 2008"–(15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of approximately 3,992 sq. ft. (0.99 FAR); a lot coverage of approximately 44 percent; an open space of approximately 56 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with perimeter wall, height and setback requirements under ZR § 23-631;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 13, 2009.

170-08-BZ
CEQR #08-BSA-100M
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.
SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.
PREMISES AFFECTED – 411-431 East 69th Street, block bounded by East 69th and East 70th Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Gary T. Tarnoff and James Power.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decisions of the Manhattan Borough Commissioner dated June 23, 2008, acting on Department of Buildings Application No. 110098787, reads in pertinent part:

"1. ZR 24-11 – The floor area proposed exceeds that permitted for an R8 Zoning District.
2. ZR 24-11 – The lot coverage proposed exceeds that allowed for an R8 Zoning District.

3. ZR 24-36 – The minimum rear yard requirement has not been met.
4. ZR 24-522 – The height and setback proposed for the building does not comply with the requirements.
5. ZR 24-552 – A rear yard setback is required for the proposed building;
6. ZR 24-35 – The open areas provided along the side lot lines, at the mechanical penthouse level, are less than 8'-0";" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the proposed construction of an 18-story biomedical research building for Weill Cornell Medical College to be occupied by community facility use, that does not comply with zoning parameters for community facility floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; and

WHEREAS, the application is brought on behalf of Weill Cornell Medical College ("Weill Cornell"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with a continued hearing on December 9, 2008 and then to decision January 13, 2009; and

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

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

WHEREAS, certain area residents testified in opposition to the application; and

WHEREAS, additionally, the Kingsley Condominium, represented by counsel (hereinafter, the "Opposition"), also appeared at hearing, and made submissions into the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, as well as other items, and are addressed below; and

WHEREAS, the subject site consists of tax lots 8, 14, 15, 16, and part of Tax Lot 21, which together comprise a single zoning lot (tentative Tax Lot 8, the "Zoning Lot"); and

WHEREAS, the subject site is occupied by three buildings which are proposed to be demolished; and

WHEREAS, the subject site is located on the north side of East 69th Street between First Avenue and York Avenue within an R8 zoning district; and

WHEREAS, the subject site has a total lot area of 26,116 sq. ft., and

WHEREAS, the subject site is located at the southwestern end of Weill Cornell's campus, which is primarily located on the subject block and on the east side of York Avenue between East 68th and East 70th Streets; and

WHEREAS, the first and second floors are proposed to be occupied by public lobbies and meeting, educational and building support space; the third through 16th floors will be occupied by research laboratories and related functions (totaling 287,910 sq. ft.); the 17th and 18th floors are proposed to be occupied by mechanical space; and six below-grade levels will be occupied by laboratory support and building support space, which do not contribute to the building's total floor area; and

WHEREAS, the proposed building would have the following parameters: (1) floor area of 331,945 sq. ft. (169,754 sq. ft. is the maximum permitted floor area); (2) an FAR of 12.71 (6.5 is the maximum permitted FAR for community facility use); (3) lot coverage of 92 percent (65 percent is the maximum permitted lot coverage); (4) a street wall height of approximately 231 feet and total building height (including mechanicals) of 302'-7" (85'-0" is the maximum height permitted), without a setback (a setback of 20'-0" is required); (5) a rear yard of 15'-0" (30'-0" is required above 23'-0"), with no setback (a setback of 20'-0" is required above 125'-0"); and (6) two side yards of 5'-0" (if provided, two side yards of 8'0" are required); and

ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the "(a) finding"); and

WHEREAS, the applicant represents that the waivers are sought to enable Weill Cornell to construct a facility that meets its programmatic needs; and

WHEREAS, as to these programmatic needs, the applicant represents that Weill Cornell is a non-profit profit educational institution, with a mission to develop a state-of-the-art medical science and research facility with floor plates that facilitate interdisciplinary and translational research and laboratories and which are proximate to the Weill Cornell Medical Center; and

WHEREAS, the applicant states that Weill Cornell has adopted a strategic plan focusing on translational and clinical research in metabolic, cardiovascular and neuro-psychiatric disorders, infectious diseases, genetics, nano-biotechnology and stem cell biology and intends to recruit 50 additional tenure-track research faculty, and to enroll an additional 51 graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 support personnel to conduct this research; and

WHEREAS, the applicant further states that all available research facilities on the campus are being used to capacity and there is no room to expand within Weill Cornell's existing buildings; and

WHEREAS, the applicant represents that Weill Cornell's existing research facilities are inadequate in size and quality, lack floor plates capable of supporting modern research and are largely located in obsolete buildings constructed before 1960; and

WHEREAS, the applicant represents that Weill Cornell cannot fulfill its research mission, remain competitive, and attract and retain highly-skilled physicians, researchers, and medical students without providing modern

research laboratories; and

WHEREAS, the applicant further represents that the research space of the proposed research facility has been designed to be modern and competitive with other such facilities and to promote the desired research environment by creating opportunities for collaborations among different scientific disciplines; and

WHEREAS, to achieve this multi-disciplinary collaborative model with efficiency and adaptability, the laboratory floors require large uniform floor plates; and

WHEREAS, the applicant cites spatial analyses reflecting that effective laboratory floor plates for institutions with similar missions to Weill Cornell's range from 20,000 sq. ft. to 35,000 sq. ft.; and

WHEREAS, the studies reflect that a certain sized floor plate is dictated by the optimum number of principal investigators ("P.I.'s") per floor, their space requirements and the additional space necessary for ancillary offices, equipment rooms and conference rooms required by multi-disciplinary teams of scientists; and

WHEREAS, a study cited by the applicant also reflects that 1,400 to 1,700 net sq. ft. is the minimum area required for each lead scientist or P.I., and that eight to ten is the optimum number of P.I.'s to station on each floor; and

WHEREAS, the applicant represents that none of the laboratory floor plates of Weill Cornell's existing facilities is optimally sized and that each active P.I. now occupies an average of only 925 sq. ft.; and

WHEREAS, the applicant represents that the proposed 21,752 sq. ft. floor plate (not including mechanical space) will provide 1,600 sq. ft. of space to each of the proposed 370 P.I.s and is therefore the minimum size required for Weill Cornell's research programs; and

WHEREAS, the applicant also proposes to provide two floors of above-grade mechanical space; and

WHEREAS, the applicant states that above-grade mechanical space is necessary to provide better air quality to laboratories and that placing air and exhaust air streams adjacent to each other at the top of the building allows air-to-air heat exchangers to maximize heat recovery and achieve greater energy efficiency; and

WHEREAS, the applicant represents that the waiver to floor area is sought to provide the square footage necessary to meet Weill Cornell's' research and educational programmatic needs, and the waivers to lot coverage, front and rear height and setbacks, and rear and side yards, allow Weill Cornell to achieve research facility floor plates that are efficient and encourage collaboration among research teams; and

WHEREAS, the applicant states that a complying facility would be limited to 169,754 sq. ft, of floor area; and

WHEREAS, based on an extensive review of its facilities and operations, Weill Cornell determined that 280,000 sq. ft. of laboratory and educational programmatic space was needed for development of an academic and medical center building that would reduce overcrowding on its campus, while creating an interdisciplinary and translational research center consistent with National Institute of Health (NIH) guidelines; and

WHEREAS, the applicant states that Weill Cornell determined that approximately 280,000 sq. ft of program space was required: 220,000 sq. ft. for laboratory space; and 60,000 sq. ft. of educational program space, consisting of classrooms, lecture halls, conference rooms, and an atrium with garden area; and

WHEREAS the applicant further states that Weill Cornell's demands are also driven by the programmatic need to relocate 54 to 90 faculty members from overcrowded facilities on the east side of the campus, as well as the need to accommodate 50 additional faculty being recruited in response to the NIH strategic plan for interdisciplinary and translational research centers; and

WHEREAS, the applicant represents that recruitment of 50 additional tenure-track research faculty will result in the addition of approximately 51 additional graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 other support personnel, while the relocated 54 faculty members would result in the addition of 53 graduate students, 107 post-doctoral fellows, 107 technicians, 27 non-tenure track research faculty, and 27 other support personnel; and

WHEREAS, the applicant further represents that a complying building would provide less than half the programmable square footage necessary to meet Weill Cornell's research and educational programmatic need, and that a complying building would further require 11,737 sq. ft. of program space to be located in below grade space where it would not count as floor area; and

WHEREAS, the applicant states that the proposed facility would provide the research laboratory space needed to meet the programmatic need on above-grade floors in space appropriate to that use and without the loss of research support facilities; and

WHEREAS, the applicant states that the rear yard, height and setback waivers are necessary to accommodate the minimum floor plate depth of 85 feet required for an efficient laboratory module; and

WHEREAS, further, the applicant states that the proposed site is the most viable to satisfy its programmatic needs because the nature of clinical research requires that facilities be located proximate to patient care facilities and the subject site is adjacent to the Weill Greenberg Ambulatory Care Center at the corner of East 70th Street and York Avenue; and

WHEREAS, the subject site's location within the Medical Center's campus also facilitates connectivity and allows students to be integrated into research programs and clinical physician faculty to have easy access to both their patients and to research laboratories; and

WHEREAS, in addition to its proximity to the Medical Center's campus, Weill Cornell identified the subject site as the most operationally feasible location for the proposed research facility because: (1) research laboratory uses are currently located on the site; and (2) the existing uses can be relocated elsewhere on the campus or within the proposed building; and

WHEREAS, although the subject site was found to constitute the optimum site for the proposed project from an operational standpoint, Weill Cornell represents that it is unable to accommodate its programmatic needs within a building or a site plan that complies with all relevant R8 zoning district regulations; and

WHEREAS, in its submission, the applicant considered an as-of-right alternative for the proposed development, but determined that – at 12 above-grade stories and 169,754 sq. ft. of floor area – it would provide less than half the floor area of the proposed facility; and

WHEREAS, the applicant further represents that complying with the subject zoning would produce a tiered facility with inefficient non-uniform floor plates that would severely compromise the functionality and efficiency of the laboratory space; and

WHEREAS, the applicant states that the third through sixth floors would be limited by the lot coverage and rear yard regulations to 10,370 programmable square feet per floor; and

WHEREAS, the lot coverage limitations would allow a maximum building depth of 65'-3", necessitating a design that would hinder effective research collaboration and the informal interaction that is the catalyst for scientific discovery; and

WHEREAS, the applicant states that the setback regulations require a 20-foot setback from the street line for floor seven through nine and a setback of approximately 53 feet from the western lot line on floors 10 through 12; and

WHEREAS, the applicant states that the seventh, eight and ninth floors would consequently have floor plates of 7,232 sq. ft. and the 10th, 11th, and 12th floors would have floor plates of 5,168 sq. ft., all with maximum depths of 50'-5"; and

WHEREAS, the applicant further states that floors seven through nine of a complying building would accommodate a maximum of five principal investigators and that the 10th through 12th floors could accommodate only three principal investigators, each with a lab group size of no more than two to three researchers with a layout that would not permit direct relationships and collaborations between lab teams; and

WHEREAS, the applicant further states that the height and setback regulations would also limit the efficiency of the program and of the mechanical and other building systems, the cost benefits of sharing expensive scientific equipment among an optimum number of researchers, and the economies of the building support systems; and

WHEREAS, the applicant concludes that the floor area, lot coverage, front and rear height and setbacks, and rear and side yard relief is required to meet the programmatic and design imperatives of the proposed research facility; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that Weill Cornell, 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 Weill Cornell is a New York State chartered educational institution providing a significant educational program, which will operate the proposed research facility; and

WHEREAS, the Board also notes that the proposed research facility has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, accordingly, the Board finds it appropriate to give deference to Weill Cornell'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 Weill Cornell; and

WHEREAS, specifically, as set forth above, the applicant represents that the proposed research facility will provide Weill Cornell with 14 laboratory floors, which meet the minimum required floor area for modern translational research programs, and two floors for other educational uses; and

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

WHEREAS, the Opposition argues that the applicant has failed to make the (a) finding because: (1) the site is not unique; and (2) the negative impacts of the proposed development outweigh its positive benefits; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant cannot satisfy the (a) finding under ZR § 72-21 because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its requirements for laboratory space to establish that the requested variances are necessary to satisfy its programmatic needs, consistent with the Cornell decision; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to

accommodate the expansion needs of educational institutions; and

WHEREAS, the applicant states that Weill Cornell enrolls 465 MD and MD/Ph.D students as well as 394 candidates for other degrees (Ph.D., M.S. and P.A.) in its graduate biomedical and health sciences degree programs; and

WHEREAS, the applicant further states that the employees at the proposed research facility will include approximately 104 to 182 Medical School faculty, 98 graduate students, 196 post-doctoral fellows and 196 technicians; and

WHEREAS, the applicant represents that the outcomes of research conducted at the proposed research facility will be "translated" into Weill Cornell's clinical care and medical education in furtherance of its mission, and that research facilities such as that proposed are customarily found on the campuses of medical schools; and

WHEREAS, the Opposition argues that Weill Cornell is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the project use outweigh the public benefits presented by the proposed project; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see Albany Prep. Charter Sch. v. City of Albany, 31 A.D.3rd 870 (3rd Dep't 2006); Trustees of Union Col. v. Schenectady City Cnl., 91 N.Y.2d 161 (1997)); and

WHEREAS, as discussed below, the Opposition has failed to establish that the proposed research facility will negatively impact the health, safety or welfare of the surrounding community; and

WHEREAS, in sum, the Board has reviewed the submissions made by the Opposition, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposed research facility; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations due to the programmatic needs of Weill Cornell; and

ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the "(b) finding"), unless the applicant is a nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since Weill Cornell is a nonprofit institution and each of the required waivers are associated with its community facility use and are sought to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of community facility floor area, lot coverage, rear yard, front and rear height and setbacks, and rear and side yards will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposed development is compatible with the medical and research uses that characterize the York Avenue corridor from East 60th Street to East 72nd Street; and

WHEREAS, the applicant states that the campus of Memorial Sloane Kettering Cancer Center ("MSK") is located immediately to the south of the subject site between East 66th and East 69th Streets and First and York Avenues and that a NYPH-Weill Cornell superblock is located one-half block from the subject site on the east side of York Avenue between East 68th and East 71st Streets; and

WHEREAS, the applicant represents that the proposed development is also compatible with the scale and bulk of the surrounding area; and

WHEREAS, the applicant states that the surrounding area consists of higher density, R10, R10A and R10 equivalent districts along the avenues and wide streets, and mid-density districts, primarily R8, R9 and R8B districts on the mid-blocks; and

WHEREAS, maps submitted by the applicant indicate that there are numerous large buildings in the surrounding area, including (i) the adjacent 40-story Kingsley Condominium with a height of 406 feet, and an FAR of 16.94; (ii) the Payson House residence at 435 East 70th Street, with a height of 332 feet; (iii) the Oxford Condominium, at 422 East 72nd Street, with a height of 374 feet; (iv) the 26-story Baker Tower and 36-story Helmsley Medical Tower, to the east of the subject site across York Avenue, with respective heights of 398 feet and 384 feet; and (v) MSK's Zuckerman Research Center, located directly across East 69th Street with a height of 424 feet and FAR of 11.24; and

WHEREAS, the Opposition contends that the development of the proposed building would be inconsistent with the mid-block scale of the surrounding area which is stated to be predominately built of moderate-height residential tenement buildings; and

WHEREAS, the applicant states that the mid-blocks to the south of the subject site, from East 67th Street to the midpoint between East 68th and East 69th Streets, were rezoned from R8 to R9 in 2001; and

WHEREAS, the applicant further states that a 26-story, approximately 420-foot MSK-occupied research

building was recently constructed on the mid-block portion of the block bounded by First and York Avenues and East 69th and East 68th Streets across the street from the subject site, and that other tall mid-block buildings in the surrounding area include the MSK Research Building at 430 East 67th Street (16 floors), and residential buildings at 333 East 68th Street (16 floors), 310 East 70th Street (12 floors), 309 East 70th (12 floors), 311-19 East 69th Street (13 floors) and 325-339 East 69th Street (13 floors); and

WHEREAS, the applicant represents that the proposed research facility would not impact the development or use of other property, in that all the sites to the north and east are owned and occupied by the Weill Cornell Medical Center and sites to the south are owned and occupied by MSK; and

WHEREAS, further, any impacts on surrounding development would also be limited by the location of the subject site within Weill Cornell's campus and by its proximity to the MSK campus; and

WHEREAS, the applicant represents that the proposed waivers to the required setback and sky exposure plane would not result in a building that is out of context in terms of its height or its location at the streetline, as East 69th Street is characterized by buildings of varied height, massing and material, with some setback configurations that are not in compliance with the bulk regulations of the Zoning Resolution; and

WHEREAS, the applicant further represents that the façade of the proposed building includes decorative elements that relate to nearby residential buildings as well as to the primary façade of the adjacent Weill Greenberg Center and that the building has been designed to reduce its apparent height from the street; and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area; and

WHEREAS, with respect to traffic, the applicant states that the project is expected to generate truck traffic estimated at 15 to 20 vehicles per day and that the projected traffic generated by the proposed facility is below the City's established thresholds for requiring a traffic analysis; and

WHEREAS, the applicant further states that East 69th Street is a one-way street which is not a primary route for emergency vehicles arriving at or departing from New York Presbyterian Hospital, which will generally travel west on 68th Street and north and south on York Avenue; and.

WHEREAS, the applicant states that special measures will be implemented with respect to the handling and disposal of biohazardous materials in conformance with all applicable federal, State and City regulations; and

WHEREAS, during the process, the Board raised concerns regarding the loading berths; and

WHEREAS, the Board noted that the loading berths were located on the west side of the proposed facility, adjacent to residential buildings, and asked whether they could be relocated to the east site; and

WHEREAS, the applicant's response states that the west side of the site is four feet higher than the mid-point of the site where the building entrances are proposed and that the placement of the loading docks on the west thereby takes advantage of grade elevation changes across the site to resolve the differences in the floor-to-floor height requirements needed for the loading docks and for the program spaces; and

WHEREAS, the applicant further states that a floor of classroom space can fit within the 14'-0" floor-to-floor height of the proposed facility, but that the loading docks need a height of 24'-0" for truck clearance and structural transfers and MEP systems distributions over the docks, and that locating the loading docks on the higher side of the site, to the west, maximizes the college program space on the east side of the lobby of the proposed facility and provides for a more efficient layout; and

WHEREAS, further, the Board noted that the two proposed waste compactor berths were not fully enclosed and asked whether they could be redesigned to ensure that any loading activities would be less disruptive to the adjacent residential uses; and

WHEREAS, in response, the applicant provided revised plans which can accommodate a 40-foot truck with the loading dock doors in a closed position, so that all removal operations can be fully contained within the proposed facility; and

WHEREAS, the applicant states that the materials handling entrance/loading dock area will therefore be fully enclosed and that all trash loading activities would take place within the building concealed behind a stainless steel art wall when trucks are not entering or leaving the facility; and

WHEREAS, according to shadow studies performed by the applicant, the proposed research facility would result in incremental shadows on five sun-sensitive resources: St. Catherine's Park, two blocks to the southwest; the Church of St. Catherine of Siena across 69th Street, and public plazas at 400 East 70th Street (the Kingsley); 400 East 71st Street (the Windsor), and 422 East 72nd Street, which would be of limited extent and duration during the late spring and summer months; and

WHEREAS, based upon the above, the Board finds that the subject variances will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the development of a state-of-the-art translational research facility with: (i) at least 280,000 sq. ft. of laboratory and educational programmatic floor area; (ii) floor plates of at least 20,000 sq. ft; (iii) a floor plate configuration that promotes collaborations among laboratory teams; (iv) above-grade mechanical space; and (v) proximity to Weill Cornell's

campus; and by the consequential difficulty in accommodating those needs within an as-of-right development; and

WHEREAS, the Opposition contends that Weill Cornell created its hardship by its desire to expand; and

WHEREAS, the Board notes that the need by an educational institution to expand its facilities is not recognized as a self-created hardship under New York law; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by Weill Cornell or a predecessor in title; and

ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant further represents that Weill Cornell, through its consultants, has designed research space that is modern and competitive with other such facilities and which minimizes the degree of waivers sought by meeting certain thresholds for maximum efficiency; and

WHEREAS, the applicant states that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum variance necessary to allow Weill Cornell to meet its programmatic needs; and

WHEREAS, the Opposition argues that the (e) finding cannot be met because an as-of-right research facility could be built on the subject site; and

WHEREAS, as discussed above, the applicant explored an as-of-right scenario for the proposed project, and found that it provided insufficient floor area and lacked floor plates with the same size and functionality as that of the proposed building; and

WHEREAS, the Board asked the applicant to explore the feasibility of a 10 FAR research facility; and

WHEREAS, in response, the applicant prepared plans indicating that development of a 10 FAR facility would result in a loss of four floors of laboratory space, representing a loss of 29 percent of the laboratory space in the proposed facility; and

WHEREAS, the applicant states that the loss of four floors of laboratory space would consequently result in a reduction of between 28 and 40 new and existing faculty intended to be housed in the new research building, and would reduce the number of PIs to between 76 and 100, as compared to the between 104 and 140 PIs that would be accommodated in the proposed facility and that the numbers of PIs and faculty that could be accommodated would be insufficient to meet its programmatic need; and

WHEREAS, the Board therefore finds that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum necessary to allow Weill Cornell to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.4(b) (6) (v) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA100M, dated January 6, 2009; and

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

WHEREAS, the New York City Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a June 2008 EAS; (2) a May 2008 Phase I Environmental Site Assessment report; (3) a October 2008 Revised Phase II Workplan and; (4) a Health and Safety Plan (HASP); and

WHEREAS, the applicant has agreed to implement any hazardous materials remediation, pursuant to a Restrictive Declaration executed on January 5, 2009 and recorded against the subject property on January 6, 2009; and

WHEREAS, a passenger car equivalent screening analysis was performed which determined that the proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact from mobile noise sources; and

WHEREAS, based on noise measurements performed at two locations adjacent to the subject site, the proposed project would require a window/wall attenuation of 30 dBA in order to maintain an interior noise level of 45 dBA; and

WHEREAS, the EAS stated that this attenuation would be achieved through the use of double-glazed windows which would provide a window/wall attenuation of 30 dBA; and

WHEREAS, the proposed building would also include central air-conditioning which is an acceptable alternate means of ventilation to maintain a closed window condition; and

WHEREAS, the Board finds that the proposed action will not have a significant adverse impact on stationary source noise; and

WHEREAS, as discussed above, the EAS found that the proposed facility would result in incremental shadows on five sun-sensitive resources: St. Catherine's Park, two blocks to the southwest, the Church of St. Catherine of Siena across 69th Street, and public plazas at 400 East 70th Street (the Kingsley), 400 East 71st Street (the Windsor), and 422 East 72nd Street, but that these shadows would be of

limited extent and duration and would not result in a significant adverse impact; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential air quality impacts of the proposed action; and

WHEREAS, with respect to air quality, the DEP evaluated submissions dated October 27, 2008 and January 5, 2009 and determined that the maximum hourly incremental traffic from the proposed project was less than the mobile source air quality screening threshold of 100 peak hour trips set forth in the CEQR Technical Manual and therefore the project is not expected to create significant adverse impacts from mobile source air emissions; and

WHEREAS, the applicant states that laboratories will be equipped with a fume hood exhaust system to prevent any hazardous airborne chemical released within the laboratory from escaping into other areas of the building, or through windows to the outside; and

WHEREAS, the EAS analyzes potential emissions from the proposed facility's fume hood exhaust system in the event of an accidental spill of the chemicals with the greatest potential health hazard; and

WHEREAS, the analysis indicates that the maximum concentrations emitted as a result of a chemical spill would be lower than the corresponding short term exposure limits ("STELs") or ceiling values set by the Occupational Safety and Health Administration or the National Institute for Occupational Safety and Health for each of the chemicals analyzed; and

WHEREAS, accordingly, the EAS concludes that there would be no significant impacts from a chemical spill from fume hood emissions due to recirculation back into the building's air intakes or on other nearby buildings in the surrounding community; and

WHEREAS, the applicant additionally states that there is no potential for significant adverse impacts arising from emissions from a spill of materials in laboratories due to special exhaust features which remove 99.97 percent of all airborne matter 0.3 microns in diameter and larger, and cannon fans that further dilute emissions; and

WHEREAS, a stationary source screening analysis was performed to evaluate the potential for significant air quality impacts on the proposed project from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant which would be ducted to an existing common stack located above the Annex building between East 70th and 71st Streets east of York Avenue; and

WHEREAS, based on the screening analysis, emissions from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant are not anticipated to result in significant adverse stationary source air quality impacts; and

WHEREAS, the applicant states that no significant effects that would require an environmental impact statement are foreseeable; and

WHEREAS, the Opposition contends that the preparation of an environmental impact statement is required by SEQRA because the proposed research facility has the potential to create a health hazard in a densely populated residential neighborhood; and

WHEREAS, the Opposition argues that the building will be a biomedical research facility with a biosafety classification of "Level 3" that may endanger the surrounding community; and

WHEREAS, the applicant states that biohazards are classified by the Public Health Service Centers for Disease Control ("CDC") according to the degree of containment required, from BSL-1, which requires the lowest level of containment, to BSL-4 which requires the highest level of containment; and

WHEREAS, the applicant states the proposed facility will have many different laboratories and that the current plans for the building include one BSL-3 ("Level 3") laboratory on a portion of one floor of the building, with the other laboratories to be a mix of BSL-1 and BSL-2; no BSL-4 laboratories are planned; and

WHEREAS, the Opposition asserts that the siting of a BSL-3 laboratory in a "high traffic area;" is discouraged by "Biosafety in Microbiological and Biomedical Laboratories" (the "BMBL"), published by the US Department of Health and Human Services, CDC and National Institute of Health ("NIH"); and

WHEREAS, the applicant states that the BMBL sets forth guidelines to prevent personal, laboratory and environmental exposure to potentially infectious agents or biohazards and that there is no potential for significant environmental or health risk associated with medical research if the laboratories are operated by trained professionals in compliance with such guidelines; and

WHEREAS, the applicant asserts that Weill Cornell's proposed operations are consistent with the BMBL guidelines; and

WHEREAS, the applicant further points out that numerous BSL-3 laboratories currently operate in densely populated New York City neighborhoods; and

WHEREAS, the applicant further states that the Opposition has misconstrued a recommendation from an outdated edition of the BMBL concerning the siting of a BSL-3 laboratories within a high traffic area of a research facility, not an urban neighborhood; and

WHEREAS, the applicant represents that the distinction is clear in the most recent edition of the BMBL which does not contain the phrase "high traffic areas," but states that BSL-3 laboratories are to be "separated from areas which are open to unrestricted traffic flow *within the building* (emphasis added)," and which continues, "[p]assage through two sets of self-closing doors is the basic requirement for entry into the [BSL-3] laboratory from access corridors or other contiguous areas;" and

WHEREAS, the applicant states that Weill Cornell has many years of experience operating BSL-3 laboratories and currently conducts medical research with hazardous materials, including chemicals and biological agents in the existing buildings on the subject site, and in other locations throughout its campus, and

WHEREAS, represents that the proposed facility will not contain any uses that are not already allowed as-of-right on the site, and that are not already conducted safely throughout the Weill Cornell campus and New York City; and

WHEREAS, the applicant further represents that, if the instant application is not approved, Weill Cornell may construct a smaller biomedical research building on the subject site in which could operate a new BSL-3 laboratory as-of-right; and

WHEREAS, the Opposition also asserts that the EAS was deficient in its analysis of potential significant adverse impacts by failing to consider the potential risks associated with: (i) malfunction of containment systems; (ii) infection of staff; (iii) failure of the exhaust system; (iv)

release of infectious materials during transportation; (v) unauthorized removal of pathogens; and (vi) bioterrorism; and

WHEREAS, the applicant states that the potential for an accident is speculative, and neither SEQRA nor CEQR require the analysis of speculative impacts (see, e.g., Ind. Liaison Comm. v. Williams, 72 N.Y.2d 137, 146 (1988); Real Estate Bd. of New York, Inc. v. City of New York, 157 A.D.2d 361, 364 (1st Dep't 1990); and

WHEREAS, the Board agrees that the mere theoretical possibility of an accident, whether affecting a lab worker or the community, is not enough to support a finding that the proposed research facility has the potential for a significant adverse environmental impact; and

WHEREAS, the applicant states that all medical research activities involving the use of chemicals, biological materials, and radiological materials that would be conducted in the proposed facility are strictly regulated at the federal, State and local level; and

WHEREAS, the applicant further states that the CDC and the NIH have established guidelines specifying appropriate containment procedures for research activities involving recombinant DNA, pathogenic agents, and other biohazards which are mandatory for federally-funded institutions such as Weill Cornell and that all activities at the building would be conducted in compliance with all applicable regulatory requirements and research guidelines; and

WHEREAS, laboratories also are subject to New York City Fire Department rules relating to flammable and explosive materials and the certification of certain laboratory personnel; and

WHEREAS, the applicant represents that Weill Cornell laboratories involving the use of biological materials have special safety features including security check points, visual and audio surveillance, double-locking doors, intruder alarms, and locked and extra-strength storage cabinets and that BSL-3 laboratories in particular have special design measures that comply with the CDC/NIH guidelines to further ensure the safety of lab personnel and the community; and

WHEREAS, the applicant further represents that Weill Cornell implements security policies and practices to meet the requirements of the USA PATRIOT Act and subsequent bioterrorism legislation, including the performance of background checks of persons with access to hazardous agents, and that the location and quantities of these materials are frequently checked and inventoried; and

WHEREAS, all chemical, biological and radioactive wastes from the laboratories of the proposed facility would be containerized, labeled and stored prior to off-site disposal in appropriate storage areas; waste would be removed by appropriately licensed contractors; and

WHEREAS, the EAS states that the building will have diesel emergency generators which would be used in the event of a sudden loss of power from the electrical grid to provide life safety and other functions to protect both the occupants of the building and the surrounding community against the effects of any power outages on the exhaust systems of the proposed facility; and

WHEREAS, the Opposition argues that decisions in Save the Audubon Coalition v. City of New York 180 A.D. 2d 348 (1st Dept. 1992); Allen v. Boston Redevelopment Authority, 877 N.E. 2d 907 (2007); and Tri-Valley Cares v Department of Energy 203 Fed. Appx. 105, 2006 WSL 2971651 (9th Cir. 2006) support its position that preparation of an EIS is required to analyze the potential environmental impacts of the proposed facility; and

WHEREAS, the Board notes that the cases cited by the Opposition each concern environmental review of a facility in which biohazardous or radioactive materials will be present, but that none support the Opposition's position that an EIS is required to evaluate potential environmental impacts associated with the proposed development of such a facility; and

WHEREAS, for example, the petitioners in Audubon argued that the EIS analyzing the potential impacts of a biological research complex proposed to be located at 165th Street and Broadway did not sufficiently study public health and safety issues related to the expected use and possible release of hazardous chemicals, radioactive material and biohazardous materials at a research facility located in a populated area; and

WHEREAS, the Court rejected the petitioner's claim, finding that the environmental review had identified the relevant areas of environmental concern, taken the required "hard look" at them, and made a "reasoned elaboration" of the basis for its determination, as required by SEQRA; and

WHEREAS, both Allen v. Boston Redevelopment Authority (877 N.E. 2d 907 (2007)) and Tri-Valley Cares v Department of Energy (203 Fed. Appx. 105, 2006 WSL 2971651 (9th Cir. 2006)) cited by the Opposition similarly concern the adequacy of environmental review, not the requirement that an EIS be prepared; and

WHEREAS, in Allen, which involved a challenge to a BSL-4 biomedical research complex brought under the Massachusetts Environmental Policy Act, the court found that the environmental review was inadequate because it had failed to analyze the likelihood of damage to the environment caused by the release of a contagious pathogen; and

WHEREAS, in Tri-Valley Cares, the Ninth Circuit found that environmental review of the proposed construction of a federal biological weapons research laboratory was inadequate because it had failed to consider the effects of a terrorist attack; and

WHEREAS, each of the three cited cases stand for the proposition that a lead agency must conduct a detailed review of the potential impacts of biohazardous materials, radioactive materials and chemical agents, but none hold that that review can only take the form of an EIS, as the Opposition asserts; and

WHEREAS, the Board notes that the environmental review for the instant application included a detailed examination of the potential health and safety impacts of the chemical and biological agents that may be present at the proposed facility, and describes a comprehensive system of regulations and physical protections designed to contain potential hazards and protect the residents of the surrounding community, as well as the workers at the facility; and

WHEREAS, Board finds that, based on the implementation of the requirements of the applicable statutes and regulations, compliance with the CDC/NIH guidelines, the design features of the building, and waste management practices, the proposed facility would have no significant adverse impacts related to hazardous materials; 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 Type I 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 R8 zoning district, the proposed construction of an 18-story biomedical research facility building to be occupied for community facility use by the Weill Cornell Medical College, that does not comply with zoning parameters for floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 25, 2008"- (9) sheets, "September 29, 2008"-(7) sheets and "November 12, 2008"-(1) sheet; and *on further condition*:

THAT the proposed building shall have the following parameters: (1) floor area of 331,945 sq. ft.; (2) an FAR of 12.71; (3) a lot coverage of 92 percent; (4) street wall height of approximately 231 feet and a total building height (including mechanicals) of 302'-7" without setbacks; (5) a rear yard of 15'-0" without a setback; and (6) two side yards of 5'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

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 mechanical space calculations shall be subject to DOB review and approval;

THAT construction will be substantially completed in accordance with the requirements of 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, January 13, 2009.

172-08-BZ

APPLICANT – Mitchell A. Korbey, Esq., for Sunnyside Jewish Center, owners.

SUBJECT – Application June 27, 2008 – Variance (§72-21) to permit the conversion of an existing two-story residential building to a house of worship. The proposal is contrary to ZR Section 24-35 (a) (Side yards). R5 district.

PREMISES AFFECTED – 40-20 47th Avenue, aka 4702-4710 41st Street, southwest corner of 47th Avenue and 41st Street, Block 198, Lot 36, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eldad Gothelf.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated December 31, 2008, acting on Department of Buildings Application No. 402547525, reads, in pertinent part:

> "Proposed Use Group 4 house of worship does not provide two side yards of 11 feet each, as is required due to an aggregate street wall width of 109'-11", and is therefore contrary to 24-35(a). Additionally, proposed enlargement creates non-compliance in front yard, contrary to 24-34;" and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, the enlargement of a two-story and cellar residential building to a two-story community facility building to be occupied by a

synagogue (Use Group 4), which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

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

WHEREAS, Council Member Eric Gioia submitted written testimony in support of the application; and

WHEREAS, the United Forties Civic Association also submitted written testimony in support of the application; and

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

WHEREAS, this application is brought on behalf of the Sunnyside Jewish Center, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the southwest corner of the intersection at 47th Avenue and 41st Street, within an R5 zoning district, and has a lot area of approximately 1,980 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 2,190 sq. ft. and a one-story garage; and

WHEREAS, the existing non-complying residential building has the following parameters: a front yard of 7'-5" along the northern lot line and a front yard of 2'-1" along the eastern lot line (two front yards with minimum depths of 10'-0" each are required); and no side yards (one side yard with a minimum width of 8'-0" is required for a residential use); and

WHEREAS, the proposed two-story synagogue, as an enlargement of the existing residential building, maintains the non-complying front yard along the northern lot line; provides no front yard along the eastern lot line; and provides no side yards (two side yards with minimum widths of 11'-0" each are required for a community facility use); and

WHEREAS, the proposal provides for the following uses: (1) two meeting rooms, a pantry, and a storage area on the cellar level; (2) a synagogue on the first floor; and (3) two classrooms, a library, and the Rabbi's office on the second floor; 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 congregation of approximately 70 members; and (2) to provide space for services and programs other than worship services; and

WHEREAS, the applicant further states that its former synagogue located nearby at 45-46 42nd Street accommodated a congregation of over 500 members, which is far in excess of its current needs; and

WHEREAS, the applicant represents that due to a major decline in membership, the congregation was no longer able to sustain the larger facility and was forced to seek a synagogue building which can 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 states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's narrow width; and

WHEREAS, the applicant states that the proposed floor area, which complies with zoning district regulations, cannot be accommodated within the as-of-right yard parameters and allow for efficient floor plates that would accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, specifically, the subject site has a width of 22 feet and a depth of 90 feet; and

WHEREAS, the applicant states that two ten-foot front yards and two 11-foot side yards would be required for a complying community facility building in the subject zoning district; and

WHEREAS, the applicant represents that due to the front and side yard requirements, a complying community facility building would have a width of one-foot and a depth of 69 feet, and would be too narrow to accommodate any viable building; and

WHEREAS, therefore, the applicant represents that the requested front and side yard waivers are necessary to enable the Synagogue to develop a building with viable floor plates; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions on the site, namely the narrow width, 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 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 floor area are permitted in the subject zoning district;

and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the proposed Synagogue are consistent with the with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between two and six stories; and

WHEREAS, the applicant states that the Synagogue will maintain its brick façade, which is consistent with the homes in the surrounding neighborhood; and

WHEREAS, the applicant submitted photographs depicting nearby homes which were compatible with the bulk, height, and façade of the proposed Synagogue; 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, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant front and side yards; and

WHEREAS, accordingly, the Board 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 617.12 (aj) and 617.5; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination 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 R5 zoning district, the enlargement of a two-story residential building to a two-story community facility building to be occupied by a synagogue, which does not comply with front and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 14, 2008" – (8) sheets and "Received January 9, 2009"- (1) sheet; and *on further condition*:

THAT the building parameters shall be: a front yard of 7'-5" along the northern lot line, no front yard along the eastern lot line, and no side yards;

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

THAT the use shall be limited to a house of worship (Use Group 4);

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

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;

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, January 13, 2009.

190-08-BZ

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Sheila Pozon.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 25, 2008, acting on Department of Buildings Application No. 110009188, reads in pertinent part:

"Proposed Use Group 2 (residential) use in an M1-5B District is contrary to ZR 42-10.

There are no bulk regulations for Use Group 2 buildings in M1-5B districts;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in the *City Record*, with a continued hearing on November 25,

2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, City Council Member Alan J. Gerson provided written testimony recommending approval of this application; and

WHEREAS, the subject premises is located on the south side of Bond Street between Lafayette Street and the Bowery, and has 4,274 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site is currently vacant, but was formerly occupied by two four-story buildings; and

WHEREAS, the applicant proposes an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

WHEREAS, as to the proposed building: (1) the cellar level will be occupied by accessory storage and mechanicals, (2) the first floor will be occupied by the building lobby and one apartment unit, (3) the second floor through eighth floor will each be occupied by individual floor-through residential units, for a total of eight residential units; and (4) the roof level will be occupied by mechanicals and a one-story penthouse; and

WHEREAS, further, the proposed building will provide a 7'-6" setback above the seventh floor on the Bond Street frontage at a height of 95'-0"; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; and (2) the site has a shallow depth; and

WHEREAS, the applicant states that the site has a frontage of 49'-10 1/2" and an irregular depth of between 89'-7" and 99'-5", for a total lot area of 4,725 sq. ft.; and

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

WHEREAS, the applicant represents that the small size of the lot results in an inefficient floor plate, in which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms); and

WHEREAS, the applicant represents that the consequential floor plate can accommodate no more than three marketable offices on each side of the core, yielding a total of six offices on each of the second through sixth floors of a complying building; and

WHEREAS, the applicant represents that this condition, in conjunction with the 20-foot setback requirement, further yields a total of three offices on each of the seventh through ninth floors, for a total of 39 offices in the conforming commercial building; and

WHEREAS, the applicant also states that the small and irregular lot size similarly constrains the design of a conforming hotel and limits the ability to offer the amenities and number of rooms necessary to provide a reasonable rate of return; and

WHEREAS, the applicant represents that the small footprint of the site precludes the use of the ground floor for eating and drinking facilities characteristic of a typical hotel, as the reception, lobby and other hotel functions would occupy virtually all the ground floor area; and

WHEREAS, as to the uniqueness of the site, 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 100 lots within the study area, the analysis indicates that seven sites other than the subject site are not occupied by permanent structures; and

WHEREAS, the analysis further found six of the seven sites were commercially active or were undergoing development; three of the six sites were larger than the subject site, and three sites comparable in size to the subject site were located on Lafayette Street and the Bowery, major commercial thoroughfares; and

WHEREAS; of the approximately 100 sites within the study area, the Board notes that only one was found to be comparable to the subject site based on its size, location and lack of commercial use or permanent development; and

WHEREAS, the Board further notes that the incidence of one within a 100-building study area sharing the same "unique conditions" as the subject site would not, in and of itself, be 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 nine-story office building; (2) a conforming nine-story hotel; and (3) the proposed eight-story and penthouse residential building; and

WHEREAS, the feasibility study indicated that neither a conforming office building nor a conforming hotel would result a reasonable return, while the proposed residential building would result in a reasonable return; and

WHEREAS, the Board notes that prior to their demolition, the site was occupied by two buildings; and

WHEREAS, the Board questioned why it was not feasible to preserve and enlarge the two buildings for use as Joint Living Work Quarters (JLWQ) for artists, which is a conforming use; and

WHEREAS, the applicant states that the buildings formerly located on the site were not suitable for JLWQ use due to their eight-foot ceiling heights and limited ambient light; and

WHEREAS, the applicant represents that the re-use of the former buildings for commercial or residential use was also infeasible because they contained only 12,008 sq. ft. of floor area and would require a costly gut rehabilitation and the installation of new mechanical and electrical systems; and

WHEREAS, at hearing, the Board questioned whether the residential sales prices used by the feasibility analysis accurately reflected the residential real estate market for the surrounding community; and

WHEREAS, the applicant stated that the planned finishes and construction of the proposed apartments would be less luxurious than those of many recently constructed buildings and that the proposed apartments would consequently not command the premium sales prices generated by other buildings in the area; and

WHEREAS, a submission by the applicant identified five comparable buildings which yield an averaged sales price per square foot that is equivalent to the projected per foot sales price of the subject building; 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 states that the residential use is consistent with the character of the area and with new residential developments located across from the subject property at 40 and 48 Bond Street, respectively, and to its west, at 25 Bond Street and east, at 57 Bond Street; and

WHEREAS, the applicant further states that in the subject M1-5B zoning district, JWLQ use is permitted as of right in buildings constructed prior to December 15, 1961 with a lot coverage of less than 5,000 sq. ft.; and

WHEREAS, the applicant notes that the building's height is within the parameters permitted for a conforming building in the subject M1-5B zoning district; and

WHEREAS, the applicant further states that the height and bulk are compatible with the area, noting that the proposed building is comparable in height to the buildings at 40 and 48 Bond Street, as well as to loft-style buildings west of Lafayette Street; and

WHEREAS, the Board notes that a streetscape submitted by the applicant demonstrates the compatibility of the design and height of the subject building with those on the north and south sides of Bond Street between Lafayette Street and the Bowery; and

WHEREAS, the proposed building is located within the NoHo Historic District Extension, and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") dated September 30, 2008, approving the proposed building; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's 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 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, 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 eight dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; 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 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. 09BSA009M, dated July 10, 2008; and

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

WHEREAS, the Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 2008 Environmental Assessment Statement, (2) an August 2008 Phase I Environmental Site Assessment (3) an October 2008 Phase II Workplan and Health and Safety Plan; and

WHEREAS, these submissions specifically examined the

proposed action for potential hazardous materials impacts; and

WHEREAS, pursuant to a Restrictive Declaration executed on December 26, 2008 and recorded against the subject property on December 30, 2008, the applicant has agreed to implement any hazardous materials remediation required by a revised RAP; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10, *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 September 17, 2008"–(8) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

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 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, January 13, 2008.

196-08-BZ

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area A Preservation area.

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

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 16, 2008, acting on Department of Buildings Application No. 110158454, reads in pertinent part:

"ZR §§ 11-411, 11-412, 73-01, 73-03. Refer to Board of Standards and Appeals for extension of variance under Cal # 346-47-BZ;" and

WHEREAS, this is an application for a special permit pursuant to ZR § 11-411, to reinstate a prior variance which allowed the operation of a public parking garage (Use Group 8) in a C6-2 zoning district within the Special Clinton District; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with a continued hearing on November 25, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, subject to the following conditions: (i) that the garage encourage monthly parking over transient parking; (ii) that parking be limited to 81 spaces plus ten reservoir spaces; (iii) that transient parking be accepted only from the Tenth Avenue entrance; (iv) that unnecessary curb cuts be removed; (v) that street trees be planted in accordance with ZR § 26-41; and (vi) that the reinstatement of the permit be limited to the current use of the building; and

WHEREAS, the premises is located on the northeast corner of the intersection at Tenth Avenue and West 53rd Street, in a C6-2 zoning district within the Special Clinton District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1949 when, under BSA Cal. No. 346-47-BZ, the Board granted a variance to permit the premises to be occupied as a storage garage; and

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

WHEREAS, most recently, on April 10, 1979, the grant was amended to extend the term for ten years; and

WHEREAS, the term of the variance has not been extended since its expiration on April 10, 1989, and

WHEREAS, the applicant represents, however, that the use of the site as a parking garage has been continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and seeks a special permit pursuant to ZR § 73-01(d); and

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

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, at hearing, the Board requested the applicant to install rooftop screening and lighting and to respond to the recommendations of the Community Board; and

WHEREAS, in response, the applicant submitted revised plans indicating that: (i) the westernmost curb cut on West 53rd Street will be reduced from 37 feet to 20 feet; (ii) the garage will be limited to 81 spaces with ten reservoir spaces; (iii) eight foot screening which is mostly opaque will be provided along the roof's perimeter; (iv) rooftop lighting will be controlled by motion sensors and angled down to minimize glare to neighboring uses; and (v) street trees will be planted pursuant to ZR § 26-41, subject to approval by the Department of Parks and Recreation and the Department of Transportation; and

WEHREAS, in addition, the applicant represents that the rooftop parking area will be used exclusively for long-term monthly parking; 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, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 11-411 and 73-03 for a reinstatement of a prior Board approval and an extension of term for a parking garage (Use Group 8) in a C6-2 zoning district within the Special Clinton District; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received November 12, 2008"-(5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on January 13, 2019;

THAT the lot shall be kept free of graffiti, dirt and debris;

THAT the capacity of the garage shall be limited to 81 spaces and an additional ten reservoir spaces;

THAT the rooftop parking area will be used exclusively for long-term monthly parking;

THAT rooftop screening and lighting shall be provided in accordance with the BSA-approved plans;

THAT street trees shall be planted in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy be obtained by January 13, 2010;

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

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

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, January 13, 2009.

224-08-BZ
CEQR #09-BSA-020Q

APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.

SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.

PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47th Street, to the west and 48th Street to the east, Block 2305, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Robert Gardioso.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT:

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Deputy Borough Commissioner, dated July 30, 2008, acting on Department of Buildings Application No. 410103105, reads in pertinent part:

> "Proposed telecommunication facility exceeds 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of the NYC Zoning Resolution;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of nine panel antennas and related equipment

for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 9, 2008, and then to decision on January 13, 2009; and

WHEREAS, Community Board 13, Queens, recommends approval of this application, subject to a condition that the applicant provide additional screening; and

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

WHEREAS, the proposed telecommunications facility will be located on the roof of a four-story residential building upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of six panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet, three panel antennas mounted to the wall of the penthouse and extending to a maximum height of six feet above the penthouse, and three small equipment cabinets located on a steel frame centered on the rooftop, for public utility wireless communications; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds "that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;" and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board asked the applicant to respond to the concerns of the Community Board concerning the need for additional screening; and

WHEREAS, in response, the applicant provided an alternative design that provided additional screening for the telecommunications facility; and

WHEREAS, the Board reviewed both designs and concludes that the additional screening would in fact have a greater visual impact because it would render the antenna area more visually prominent than it would be without the proposed screening; and

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

WHEREAS, the 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-020Q, dated August 29, 2008; and

WHEREAS, the EAS documents show 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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I 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 the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received August 29, 2008"-(7) sheets; and *on further condition*;

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

THAT 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 § 73-30; 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, January 23, 2009.

244-08-BZ
CEQR #09-BSA-030M

APPLICANT – Rizzo Group, for BP/CGCenter II, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application October 1, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar level and first floor in a 59-story building. The proposal is contrary to ZR §32-10. C6-6 district.

PREMISES AFFECTED – 139-153 East 53rd Street; 140-16 East 54th Street; 601-635 Lexington Avenue; 884-892 3rd Avenue, north side of 53rd Street, between 3rd and Lexington Avenues, Block 1308, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Kenneth Barbina.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, a decision of the Manhattan Borough Commissioner, dated October 1, 2008, acting on Department of Buildings Application No. 110338929, reads in pertinent part:

> "Proposed 'Physical Culture Establishment' is not permitted as-of-right in C6-6 zoning district. This use is contrary to ZR Section 32-10. BSA approval required;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-6 zoning district within the Special Midtown District, the establishment of a physical culture establishment (PCE) on the cellar and first floor of a 59-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the south side of East 54th Street and the north side of East 53rd Street between Lexington Avenue and Third Avenue; and

WHEREAS, the site is occupied by a 59-story commercial building; and

WHEREAS, the PCE will occupy a total of 3,418 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and organized instruction; and

WHEREAS, the PCE will operate 24 hours per day; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District; and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Midtown District and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

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

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

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

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

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

WHEREAS, the 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. 09BSA030M, dated July 23, 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 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.

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 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 C6-6 zoning district, the establishment of a physical culture establishment on the cellar and first floor of a 59-story commercial building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 9, 2009"- (3) sheets; and "Received January 12, 2009"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on January 13, 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 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, January 13, 2009.

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: M. McCarthy.

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

61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR §32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86th Street, north side of 86th Street and east of 4th Avenue, Block 6035, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

163-08-BZ

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, Block 7656, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

198-08-BZ

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 (aka 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 – Laid over to February 2, 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.

For Opposition: Judith Baron.

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

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

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

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 and Franklyn Estrella.

For Opposition: Charlotte Picot, George Megrath, Carole Keit, Nancy Jorisch, Matthew Mandell and James Messemer.

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

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast

corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

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

207-08-BZ

APPLICANT – Eric Palatnik, P.C., for Cheon Park, owner.

SUBJECT – Application August 11, 2008 – Variance (§72-21) to permit the expansion on the first floor of an existing day care center. The proposal is contrary to ZR Section 24-34 (front yard). R4 district.

PREMISES AFFECTED – 40-69 94th Street, northern corner of the intersection formed by 41st Avenue and 94th Street, Block 1587, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beaumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Judith Barr.

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

257-08-BZ

APPLICANT – Slater & Beckerman, LLP, for 120 East 56th Street, LLC, owner; Susan Ciminelli, Inc., lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the second floor in an existing 15-story commercial building. The proposal is contrary to ZR Section 32-10. C5-2 district.

PREMISES AFFECTED – 120 East 56th Street, between Park Avenue and Lexington Avenue, Block 1310, Lot 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joshua Trauner.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

289-08-BZ

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.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.