
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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173-09-BZ

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174-09-BZY

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175-09-A

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176-09-BZ

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177-09-BZ

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178-09-A

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179-09-A

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180-09-BZ

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181-09-A

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182-09-BZ

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183-09-BZ

1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street., Block 1599, Lot(s) 7501, Borough of **Manhattan, Community Board: 10**. Special Permit (73-36) to allow the legalization of a physical culture establishment on a portion of the ground floor and cellar in an eight-story mixed-use building. The proposal is contrary to section 32-10. C4-5X district.

184-09-BZ

4072 Bedford Avenue, West side of Bedford Avenue between Avenue S and Avenue T., Block 7303, Lot(s) 37, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141); side yards (23-461) and rear yard (23-47) in an R3-2 zoning district.

DOCKET

185-09-A

67 Elder Avenue, Elder Avenue prolongation 102.04' north of Kenneth Place., Block 6789, Lot(s) 142, Borough of **Staten Island, Community Board: 3**. Construction not fronting on a mapped street, contrary to section 36 of the General City Law.

186-09-A

61 Elder Avenue prolongation 102.04' north of Kenneth Place., Block 6789, Lot(s) 144, Borough of **Staten Island, Community Board: 3**. Construction not fronting on a mapped street, contrary to section 36 of the General City Law.

187-09-BZ

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188-09-A

214 Noel Road, South side of Noel Road and East side of 103rd Avenue., Block 15459, Lot(s) 9, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

189-09-BZ

3067 Richmond Terrace, North side of Richmond Terrace west of Harbor Road., Block 1208, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Variance to allow the legalization of the existing community facility use, contrary to use regulations.

190-09-A

3075 Richmond Terrace, North side of Richmond Terrace west of Harbor Road., Block 1208, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

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

CALENDAR

JUNE 23, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 23, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

441-31-BZ

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

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

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

COMMUNITY BOARD #18BK

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

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

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

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

COMMUNITY BOARD #13Q

149-01-BZ

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

SUBJECT – Application March 26, 2009 – Amendment to a previously issued resolution that conditions the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate for a term of ten years, from the date of the issuance of the Certificate of Occupancy be removed.

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

COMMUNITY BOARD #2M

246-01-BZ

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

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

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

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

COMMUNITY BOARD #7Q

29-05-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for R & F 350 West Broadway LLC c/o RFR Holding LLC, owner.

SUBJECT – Application May 29, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the development of an 10 story mixed-use building to be occupied by retail use on the first and second floors and residential use on floors three through ten, in an M1-5A zoning district, which expires on October 18, 2009.

PREMISES AFFECTED – 350 West Broadway, west side of West Broadway, 60 feet north of the corner formed by the intersection of Grand Street and West Broadway. Block 476, Lot 75, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

62-08-A

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

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

COMMUNITY BOARD #2SI

22-09-A

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

SUBJECT – Application February 10, 2009 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street and the upgrade of an existing non complying private disposal system contrary to General City Law Section 35 and contrary to Department of Buildings Policy. R4 Zoning.

PREMISES AFFECTED – 663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd

CALENDAR

Street. Block 16350, Lot 300, Borough of Queens
COMMUNITY BOARD #14Q

JUNE 23, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 23, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (72-21) to permit a Use Group 4 community youth center within a portion of a proposed mixed-use building The proposal is contrary to section 24-35 (side yard). R5 district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance to legalize the use and enlargement of a Yeshiva, contrary to use regulations.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

9-09-BZ

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

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

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

COMMUNITY BOARD #5Q

18-09-BZ

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

SUBJECT – Application February 6, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the first, second and third floors in an existing twelve-story building. The proposal is contrary to ZR Section 32-10. C6-5, C6-7 and Special Midtown Districts.

PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

23-09-BZ

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

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

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

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 9, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

5-98-BZ

APPLICANT – Maxfield Blaufeux & Heywood Balaufeux, for Priority Landscaping Incorporated, owner.

SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.

PREMISES AFFECTED – 1861 McDonald Avenue, east side 200’ north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 of a previously granted variance for a garden supply sales and nursery establishment (UG 17) with accessory parking and storage in an R5 zoning district within the Special Ocean Parkway District, which expired on February 23, 2009; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 9, 2009; and

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

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

WHEREAS, the subject site is located on the east side of McDonald Avenue, between Quentin Road and Avenue P, in an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1981 when, under BSA Cal. No. 1046-80-BZ, the Board granted a variance to permit the construction of a one-story building for accessory parking and storage for an open garden supply sales and nursery establishment; and

WHEREAS, on June 29, 1982, under BSA Cal. No. 1046-80-BZ, the Board amended the resolution to permit changes to the building’s bulk parameters; and

WHEREAS, on February 23, 1999, under the subject calendar number, the Board permitted the re-establishment of the expired variance for a garden supply sales and nursery establishment (UG 17) with accessory parking and storage for a term of ten years, to expire on February 23, 2009; and

WHEREAS, the applicant now seeks to extend the term of the variance for ten years; and

WHEREAS, at hearing, the Board raised concerns about the need for the barbed wire fencing located around the perimeter of the site and about the owner’s use of the vacant lot at 1873 McDonald Avenue (Lot 50), located three lots to the south of the subject site, for the storage of inventory; and

WHEREAS, in response, the applicant provided an affidavit from the owner indicating that the barbed wire fencing is necessary to secure the premises and that all materials related to the garden supply sales and nursery establishment will be removed from the vacant lot located at 1873 McDonald Avenue by July 5, 2009; and

WHEREAS, at hearing, the Board observed that an additional sign has been erected at the site since the Board’s previous grant, and questioned whether the current signage complies with district regulations; and

WHEREAS, in response, the applicant submitted a sign analysis indicating that the signage at the site complies with C1 zoning district regulations; and

WHEREAS, the applicant states that there is an additional sign located at the site since the Board’s previous approval; however, the Board notes that the signage at the site still complies with C1 zoning district regulations; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 23, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 23, 2009, to expire on February 23, 2019, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received March 13, 2009”-(4) sheets, “May 7, 2009”-(1) sheet and “May 18, 2009”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 23, 2019;

THAT signage shall comply with C1 zoning district regulations;

THAT a new certificate of occupancy be obtained by December 9, 2009;

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 Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 300695941)

Adopted by the Board of Standards and Appeals, June 9, 2009.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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 of a previously granted special permit for a physical culture establishment (PCE), which expired on January 11, 2009; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in *The City Record*, with continued hearings on April 21, 2009 and May 19, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the southeast corner of the intersection at East 34th Street and Second Avenue, in a C1-9 zoning district within the Special Transit Land Use District;

WHEREAS, the site is located in portions of the cellar, first floor mezzanine, first floor and second floor of a 36-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 7,375 sq. ft., which includes 1,525 sq. ft. on the first floor, 250 sq. ft. on the first floor mezzanine, 5,600 sq. ft. on the second floor and 4,700 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 16, 1999 when, under the subject calendar number, the Board granted a special permit to permit a

PCE in the subject building for a term of ten years, to expire on January 11, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on November 16, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 11, 2009, to expire on January 11, 2019, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on January 11, 2019;

THAT signage shall comply with C1 zoning district regulations;

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 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.”

(DOB Application No. 101595037)

Adopted by the Board of Standards and Appeals, June 9, 2009.

951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.

SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

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 June 16, 2009, at 10 A.M., for decision, hearing closed.

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23-06-BZ

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

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

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

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

1252-79-BZ

APPLICANT – Benjamin A. Leonardi/Miele Associates, for C.B.R. LLC (Dr. Harry Kent), owner.

SUBJECT – Application April 2, 2009 – Extension of Term/Amendment (§72-01 and §72-22) to reopen for a unlimited time limit.

PREMISES AFFECTED – 23-87-91 Bell Boulevard, aka 214-05-15 & 214-19 24th Avenue, northwest south of 24th Avenue 10' east of Bell Boulevard and 24th Avenue, Block 5958, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joel A. Miele, Dr. Harry Kent, M.D. and Ben Leonardi.

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 June 23, 2009, at 10 A.M., for decision, hearing closed.

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72' north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

55-01-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee. SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall R and Jay Segal.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for decision, hearing closed.

26-09-BZ

APPLICANT – Board of Standards and Appeals/Sheldon Lobel, P.C.

OWNER: CAMBA Housing Ventures, Inc., owner.

SUBJECT – Review pursuant to Sec 1-10(f) of Board Rules and 666(8) of the Charter of a previously-granted Variance (§72-21) to permit the construction of a nine-story community facility building (CAMBA Housing). The proposal is contrary to §24-36. R7-1 district.

PREMISES AFFECTED – 97 Croke Avenue, north side of Croke Avenue, 164' west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel and Maria C. Rivan-Hazlewood.

For Opposition: Monique R. Derello, Barry Markman, Joshua Smalls and C.V. Whittington, MD.

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 June 26, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

19-09-A

APPLICANT – Elizabeth Safian of Sheldon Lobel Associates, for 34th and 35th Avenues Realty, LLC, owners.
SUBJECT – Application February 10, 2009 – Legalization of an existing building constructed within the bed of a mapped street contrary to General City Law Section 35. M2-1 Zoning District.

PREMISES AFFECTED – 132-55 34th Avenue, north side of 34th Avenue, 75’ east of the intersection formed by Collins Place and 34th Avenue, Block 4946, Lot 126, Borough of Queens.

COMMUNITY BOARD #7Q

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 Borough Superintendent, dated January 23, 2009, acting on Department of Buildings Application No. 410125350, reads in pertinent part:

“Building constructed in the bed of a mapped street is contrary to General City Law, Section 35 and must be referred to the BSA for approval;” and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in the City Record, and then to decision on June 9, 2009; and

WHEREAS, by letter dated March 11, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 14, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 31, 2009, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Superintendent, dated January 23, 2009, acting on Department of Buildings Application No. 410125350 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 8, 2009” – one (1) sheet; that the proposal shall comply with all applicable zoning district

requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

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

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

THAT 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, June 9, 2009.

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Alicia.

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 § 11-332, to permit an extension of time for the completion of construction of, and obtainment of a certificate of occupancy for, three semi-detached homes currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, Community Board 1, Staten Island,

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recommends approval of this application; and

WHEREAS, the subject premises is located at the southwest corner of Treadwell Avenue and Harrison Avenue; and

WHEREAS, the subject site has a frontage of 100'-0" on Treadwell Avenue and a frontage of 50'-0" on Harrison Avenue, and a total lot area of 5,000 sq. ft.; and

WHEREAS, the site is proposed to be developed with three semi-detached, two-story, one-family and two-family residential buildings (the "Buildings"); and

WHEREAS, the premises is currently located within an R3A zoning district, but was formerly located within an R4 zoning district; and

WHEREAS, the development complies with the former R4 zoning district parameters; and

WHEREAS, however, on February 1, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt a rezoning of the area, which rezoned the site to R3A; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings ("DOB") to determine that construction may continue under such circumstances; and

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

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on a single zoning lot, as a "major development"; and

WHEREAS, for "major development," an extension of time to complete construction, previously authorized by a DOB vesting determination, based on the criteria set forth in ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse 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 such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that substantial construction has been completed and substantial expenditures made subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) 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. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated April 9, 2009, DOB states that the following permits for the proposed development were lawfully issued to the owner prior to the Enactment Date: Permit Nos. 500650066-01-NB, 500650057-01-NB and 500650048-01-NB, (hereinafter, the "New Building Permits"); and

WHEREAS, the Board acknowledges that during the 24-month period between November 3, 2003 and November 10, 2005, the New Building Permits lapsed for a total of approximately four months, during which time some work was performed at the site; and

WHEREAS, additionally, DOB confirmed and the Board notes that there were no permits in effect from November 10, 2005 to December 8, 2008, when DOB re-issued them; however, the applicant states that no work was performed during this time; and

WHEREAS, the Board further notes that work recommenced at the site after the New Building Permits were re-issued on December 8, 2008, and that work continued until the New Building Permits lapsed by operation of law on February 1, 2009; and

WHEREAS, the Board has considered these lapses of time in its analysis, but has determined that the New Building Permits were in effect for the vast majority of time work was performed, which allowed for significant work to be completed as noted above and below, pursuant to valid permits; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed

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under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes all of the foundation and superstructure work, all of the windows, the roofs and gutters, exterior doors, exterior finish work, interior stairs, insulation, plumbing work, approximately 95 percent of the electrical work, and approximately 85 percent of the HVAC work; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site, which reflect that the Buildings are almost entirely complete with regard to exterior and interior construction; financial records; and copies of cancelled checks; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are approximately \$670,900, or 88 percent, of the \$761,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and copies of cancelled checks; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence and its observations made at visits to the site, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the sites a two-year extension of time to complete construction and obtain a certificate of occupancy, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit Nos. 500650066-01-NB, 500650057-01-NB and 500650048-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on June 9, 2011.

Adopted by the Board of Standards and Appeals, June 9, 2009.

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for continued hearing.

293-08-A & 294-08-A

APPLICANT – Juan D. Reyes, III, Riker Danzig, et al., for Alexandra Hladky, owner; Leonessa Development Corporation/Frank Volpicello, lessees.

SUBJECT – Application November 25, 2008 – Proposed construction of two semi detached two family homes located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 36-40 166th Street, northwest corner of Depot Road and 166th Street, Block 5288, Lot 39, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Juan D. Reyes, III.

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 June 23, 2009, at 10 A.M., for decision, hearing closed.

160-09-A

APPLICANT – Eric Palatnik, P.C., for HBC Corona, LLC, owner.

SUBJECT – Application April 22, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district. C2-4 /R6A.

PREMISES AFFECTED – 112-15 Northern Boulevard, between 112th Street and 112th Place, Block 1706, Lot 25, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik, Jeff Lau and Chris Xu.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

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Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 9, 2009
1:30 P.M.**

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

ZONING CALENDAR

269-06-BZ

CEQR #07-BSA-026R

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to §22-00. R3-2 district (South Richmond Special District).
PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

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, June 9, 2009.

193-08-A

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

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

COMMUNITY BOARD #3SI

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, June 9, 2009.

178-07-BZ

CEQR #08-BSA-001K

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.
PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

For Applicant: Peter Hirshman and Rabbi Schorsher.

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, June 9, 2009.

88-08-BZ

CEQR #08-BSA-078Q

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

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

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Alfonso Duarte and Richard Lobel.

For Opposition: Lisa Gomes

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

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

WHEREAS, the decision of the Deputy Borough Commissioner, dated April 8, 2008, acting on Department of Buildings Application No. 410010410, reads:

“Proposed offices UG 6 contrary to permitted use in residential zone as per ZR 22-00”; and

WHEREAS, a public hearing was held on this application on March 3, 2009, with a continued hearing on April 21, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R5 zoning district, the conversion of a three-family home to a Use Group 6 office use, contrary to ZR § 22-00; and

WHEREAS, Community Board 9, Queens, recommended disapproval of this application; and

WHEREAS, City Council Member Joseph Addabbo, Jr. and District Leader Taj Rajkumar of the 31st Assembly District provided written testimony in support of the application; and

WHEREAS, the subject lot has a width of approximately 29 feet, a total lot area of 3,269 sq. ft., and is located on the east side of Lefferts Boulevard, between 101st Avenue and 103rd Avenue; and

WHEREAS, the site is occupied by a three-story, three-family home, with 2,623 sq. ft. of floor area (0.8 FAR) (hereinafter, the “House”); and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in using the House or otherwise developing the site in strict conformance with underlying district regulations: (1) the site is adjacent to the boundary line for a C2-2 zoning district overlay; (2) the site is located at the intersection of two heavily-trafficked thoroughfares; (3) the site has a narrow width; (4) the site is located across the street from three non-residential uses and is unmarketable for a residential use; and

WHEREAS, the applicant cites to case law and prior Board decisions, claiming it establishes precedent for the following issues: (1) the quantum of proof required for variance applications and (2) the standards required to establish the uniqueness finding pursuant to ZR § 72-21(a); and

WHEREAS, the case law and prior Board decisions will be discussed below; and

WHEREAS, as an initial matter, the Board notes that the mere existence of certain physical conditions on, or related to, a site is insufficient to support the uniqueness finding set forth at ZR § 72-21(a); and

WHEREAS, ZR § 72-21(a) provides that the physical conditions, once proven to be unique, must also result in practical difficulties or unnecessary hardship in strictly conforming to applicable zoning provisions such that there is a nexus between the uniqueness and a resulting hardship; and

WHEREAS, as to the location, the applicant asserts that the southern boundary line of the adjacent C2-2 zoning district overlay abuts the site and that this creates a condition that is not compatible with a conforming residential use at the site; and

WHEREAS, as to the uniqueness of this condition, the Board notes that within a 400-ft. radius of the site, there are six sites (on blocks 9488, 9487, and 9486), which abut the C2-2 overlay and, pursuant to the applicant’s map, at least four of those sites, including the subject site, are occupied

by two- or three-family homes; further, three of those four sites are actually partially within the C2-2 overlay; and

WHEREAS, the applicant submitted land use maps and color-coded Sanborn maps, which reflect that there are a multitude of conforming residential uses within the subject zoning district and even within the C2-2 overlay; and

WHEREAS, in fact, the Board notes that the majority of the sites within the 400-ft. radius within the C2-2 overlay are also occupied by residential uses, similar to the House; and

WHEREAS, the Board notes that the two sites directly to the north of the subject site are within the C2-2 zoning district and, pursuant to the applicant’s map, are occupied by residential use; and

WHEREAS, further, the Board notes that C2-2 zoning districts are among the ten variations of commercial overlays set forth in the Zoning Resolution, which are mapped throughout the city’s lower and medium density residential zoning districts; commercial overlays are, by definition, mapped within residential zoning districts and serve the local retail needs of the surrounding residential neighborhood; and

WHEREAS, the uses permitted within the C2-2 overlay are limited and deemed to be compatible with adjacent residential use; the description of C2 Local Service Districts in ZR § 31-12 provides “the permitted services create relatively few objectionable influences for nearby residential uses”; and

WHEREAS, except for the overlay, the Board notes that within a 400-ft. radius of the site, the area is all zoned residentially; and

WHEREAS, accordingly, the Board notes that the applicant has not produced any evidence to support a finding that residential use is not feasible at the site due to its adjacency to the C2-2 overlay; and

WHEREAS, the Board finds the applicant’s emphasis on the site’s location adjacent to a commercial overly to be misplaced; and

WHEREAS, as to the applicant’s assertion that the site is located at the intersection of two heavily-trafficked streets, the Board notes that this is factually incorrect as there are three lots between the subject site and the corner at Lefferts Boulevard and 101st Avenue; and

WHEREAS, further, the Board does not accept the applicant’s conclusory statements that because 101st Avenue has a C2-2 overlay and because a bus route runs along Lefferts Boulevard, it is heavily-trafficked; and

WHEREAS, the Board reiterates that commercial overlays are common throughout residential zoning districts in the city, as are bus routes; and

WHEREAS, the applicant claims that the subject site, with a width of 29 feet, is uniquely narrow; and

WHEREAS, the applicant limits its analysis to Lefferts Boulevard, where eight out of 24 lots have widths of 30 feet or less; and

WHEREAS, however, the Board notes that of the 92 lots located wholly within a 400-ft. radius of the site, there are approximately 55 lots, or 60 percent, with widths of 30

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feet or less; and

WHEREAS, additionally, the two sites directly to the north on Lefferts Boulevard and within the C2-2 zoning district have lot widths of 25 feet; the adjacent site to the south has a lot width of 21 feet; and

WHEREAS, further, in light of the fact that the narrower lots are occupied with one-, two-, and three-family homes, functioning in conformance with the underlying zoning, the Board notes that the applicant fails to articulate any connection between the subject lot's width and any purported hardship; and

WHEREAS, the Board notes that the site is currently occupied by a legal three-story three-family residence with a width of approximately 20'-4" and the applicant has failed to support any contention that such a home is not habitable for its intended purpose, nor that it is distinguished from the majority of similar-sized homes in the surrounding area; and

WHEREAS, the applicant asserts that the location of the site across from three non-residential uses – a medical office, an accessory parking lot, and a catering establishment - is unique and contributes to the hardship at the site; and

WHEREAS, in support of this assertion, the applicant submitted (1) statements from two real estate brokers and (2) an affidavit from the property owner; and

WHEREAS, the real estate brokers' statements include assertions that potential tenants have declined to rent because of the location across from the catering hall at a heavily-trafficked location at an intersection; and

WHEREAS, the owner's statement includes the contention that stated that commercial use is more consistent with the character of the area; and

WHEREAS, first, the Board notes that the proffered statements are overly broad and self-serving and speak to the viability of an alternate use as opposed to the infeasibility of occupying the site with a conforming use; and

WHEREAS, the Board notes that the location across the street from three non-residential uses is not a unique condition; and

WHEREAS, in fact, all three of the noted adjacent sites are occupied by residential use on lots which range from four to eight feet narrower than that of the subject lot and are similarly situated across the street from the noted non-residential uses; and

WHEREAS, the Board notes that it is difficult to glean from the applicant's maps, but it appears as though there are significantly more residential uses across the street from commercial uses, within a 400-ft. radius of the site, including at least four other lots which are also across the street from the exact same non-residential uses as the subject site; and

WHEREAS, as to the conditions the applicant cites as present at the catering hall, such as parking and noise concerns, the Board notes that it does not consider potential Building Code and zoning non-compliances on sites which are not before it, in its analysis of compatible uses; and

WHEREAS, additionally, the Board notes that the

medical office and its accessory parking are as of right uses in the subject R5 zoning district; and

WHEREAS, finally, visits to the site and photographic evidence reflect a strong residential character on Lefferts Boulevard and in the vicinity, in comparable buildings on similarly-sized, or smaller, lots; and

WHEREAS, the Board notes that the applicant cites to case law and prior Board cases in support of its application; and

WHEREAS, the Board observes as an initial matter that all of its decisions on variance applications are site-specific, and notwithstanding commonalities in the language used to describe the Board's findings, the decisions do not serve as binding precedent for other applications; and

WHEREAS, New York State case law supports the proposition that a zoning board may recognize and give weight to various factors when making its decision in variance cases and the fact that a zoning board granted a variance request to a property owner for a site which appears to be similarly-situated to another site which was denied a variance does not in itself show that the discretionary act was arbitrary (See Matter Cowan v. Kern, 41 NY2d 591 (1977)); and

WHEREAS, the applicant discusses the concept of quantum of proof as set forth in Matter of National Merritt v. Weist, 41 NY2d 438 (1977) for the proposition that the burden of proof required to satisfy the variance findings corresponds to the magnitude of the variance sought; and

WHEREAS, the Board notes that National Merritt actually undermines the applicant's argument that the quantum of proof required in the subject case should be minimized because of the nature of the relief sought; and

WHEREAS, specifically, the court in National Merritt, in the context of contemplating a variance for bulk, stated that "a use variance will have a greater impact on the community than an area variance which does not involve a use prohibited by the ordinance" (National Merritt at 442, citing Matter of Wilcox v. Zoning Board of Appeals of City of Yonkers 17 NY2d 249 (1966)); and

WHEREAS, accordingly, the Board does not find the applicant's assertion about the quantum of proof to be persuasive in light of the fact that the applicant seeks the kind of variance which the court has held to be subject to a more difficult standard; and

WHEREAS, additionally, the applicant cites to New York Court of Appeals decision in Douglaston Civic Ass'n v. Klein, 51 NY2d 963 (1980) for the proposition that a particular site seeking a variance need not be the only one to be affected by the purported unique conditions, but rather that the conditions not be so generally applicable as to result in a zoning change if other similarly-situated sites were also granted variances; and

WHEREAS, as discussed, the Board has reviewed each of the purportedly unique characteristics of the site and, as there are a significant number of sites with many or all of the same characteristics as the subject site, does not find that the characteristics meet the Douglaston standard; and

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WHEREAS, the applicant seeks to distinguish Colonna v. BSA, 166 A.D.2d 528 (2d Dep't 1990), a case in which the Board denied a variance because the applicant failed to establish the uniqueness finding; and

WHEREAS, the applicant asserts that Colonna is distinguishable from the subject case because the applicant in Colonna relied on a single site condition for its uniqueness claim; and

WHEREAS, the Board notes that when analyzing whether uniqueness has been established in the context of a variance application, the quantity of purported unique characteristics is not dispositive to establishing uniqueness; it is the merit to the uniqueness and the nexus between such condition or conditions and a hardship in developing a site with a use that complies with zoning district regulations; and

WHEREAS, the applicant in Colonna and in the subject case both failed to identify unique conditions or to establish a nexus between any such conditions and a purported hardship in using or developing the site in conformance with zoning district regulations; and

WHEREAS, the applicant also cites to several Board decisions and suggests that the facts and the Board's findings in these cases are similar to the facts and the applicant's proposed findings in the subject case; and

WHEREAS, the cited cases are significantly dissimilar to the subject matter and therefore are erroneously cited by the applicant as being indicative of how the Board should (or must) analyze and decide the subject application; and

WHEREAS, the applicant cites to BSA Cal. Nos. 267-06-BZ, 102-02-BZ, 216-01-BZ, 140-03-BZ, and 33-06-BZ in an effort to show that the Board granted variances to similarly-situated sites; and

WHEREAS, in BSA Cal. No. 267-06-BZ, the Board considered an application for a commercial building within a residential zoning district and found that uniqueness was established because (1) the lot was triangular-shaped due to a road widening and (2) the lot was situated at a heavily trafficked three-way intersection; and

WHEREAS, in BSA Cal. No. 102-02-BZ, the Board considered an application for a mixed-use building in a residential zoning district and found that uniqueness was established because the lot was irregularly-shaped, which made it infeasible to provide the required yards; and

WHEREAS, in BSA Cal. No. 216-01-BZ, the Board considered an application to legalize a commercial use in a residential zoning district and found that uniqueness was established because the site was occupied by a former public library building which had always served as a library or for commercial use and was not suitable for residential conversion; and

WHEREAS, in BSA Cal. No. 140-03-BZ, the Board considered an application for the construction of a commercial building within a residential zoning district and found that uniqueness was established because (1) the large lot could not be subdivided into separate lots due to street frontage requirements, (2) the lot was irregularly-shaped, and (3) the lot lacked sewer access; and

WHEREAS, in BSA Cal. No. 33-06-BZ, the Board

considered an application to permit the enlargement of a commercial use within a residential zoning district on a site in what had historically been mapped within a commercial zoning district which permitted a commercial use such as the existing and proposed, a pre-existing legal non-conforming commercial use; and

WHEREAS, a careful reading of these resolutions reveals that the applicant's reliance on them is misplaced, as each decision identifies specific unique physical conditions which have a nexus to a hardship claim; and

WHEREAS, the claimed unique features set forth by the applicant do not have such a nexus: houses located adjacent to commercial overlays, with comparable widths, and across the street from non-residential uses can be both habitable and marketable, and the applicant has not provided any compelling evidence that the House can not be occupied residentially because of these, or any other factors; and

WHEREAS, the Board also notes that the mere fact that commercial use of the House may be more profitable or desirable from the perspective of the owner or a real estate broker does not support a finding that use of the House for residential purposes imposes unnecessary hardship or practical difficulties; and

WHEREAS, moreover, the Board disagrees that proximity to community facility uses – which, under certain conditions, are permitted uses in residential districts because they are presumed to be compatible with residential uses – contributes to a finding of uniqueness; community facilities are often in proximity to residences; and

WHEREAS, in sum, based upon its review of the record, the Board finds that the applicant has not provided any evidence that the alleged unique physical conditions, when considered in the aggregate, compromise the habitability of the House for residential purposes to the degree where it could be said that practical difficulties or unnecessary hardship arise; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR §72-21(a), the application also fails to meet the finding set forth at ZR §72-21(b); and

WHEREAS, even assuming *arguendo* that the noted conditions should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return.

Therefore it is Resolved that the decision of the Borough Commissioner, dated April 8, 2008, acting on Department of Buildings Application No. 410010410, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, June 9, 2009.

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237-08-BZ

CEQR #09-BSA-027M

APPLICANT – Sheldon Lobel, P.C., for Rocky Mount Baptist Church, owner; Rocky Mount Development, LLC., lessee.

SUBJECT – Application September 18, 2008 – Variance pursuant to §72-21 to allow for a 19 story community facility and residential building with 124 affordable units, contrary to bulk regulations (§23-145, §23-633, §24-552(b)) R7-2 District.

PREMISES AFFECTED – 37 Hillside Avenue, south side of Hillside Avenue, 450’ east of the intersection of Broadway and Hillside Avenue, Block 2170, Lot 118, Borough of Manhattan.

COMMUNITY BOARD #12M

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, June 9, 2009.

276-08-BZ

CEQR #09-BSA-044M

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

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

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

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte.

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 February 10, 2009, acting on Department of Buildings Application No. 110316177, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C5-2 zoning district. This use is contrary to ZR Section 32-10. Requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36

and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment (PCE) on a portion of the sixth floor of a seven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 10, 2009 after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 7, 2009 and May 12, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, a building condominium owner raised concerns that the applicant did not obtain an approval for the proposed PCE from the building’s Board of Managers; and

WHEREAS, in response, the applicant submitted a certificate of approval from the Board of Managers, dated April 29, 2009, approving the proposed use of the sixth floor as a PCE; and

WHEREAS, the subject site is located on the south side of East 55th Street, between Third Avenue and Lexington Avenue, in a C5-2 zoning district; and

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

WHEREAS, the PCE will occupy 1,498 sq. ft. of floor area on a portion of the sixth floor of the existing building; and

WHEREAS, the PCE will be operated by the Beljanski Wellness Center, Inc.; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 8:00 a.m. to 6:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; 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

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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. 09BSA044M, dated November 3, 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment on a portion of the sixth floor of an existing seven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 18, 2009"- Two (2) sheets and "Received June 3, 2009"- One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on June 9, 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, June 9, 2009.

8-09-BZ

CEQR #09-BSA-062M

APPLICANT – Sheldon Lobel, P.C., for CMG Group, LLC, owner; Facial and Tanning Consulting, Inc., lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the second floor of an existing two-story commercial building. The proposal is contrary to ZR §32-10. C6-4 district.

PREMISES AFFECTED – 125 Fulton Street, north side of Fulton Street, between Nassau Street and William Street, Block 91, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 7, 2009, acting on Department of Buildings Application No. 110387947, reads in pertinent part:

"Proposed physical culture establishment requires a special permit from the Board of Standards and Appeals as per ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-4 zoning district within the Special Lower Manhattan District, the legalization of a physical culture establishment (PCE) on the second floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 28, 2009 after due notice by publication in *The City Record*, and then to decision on June 9, 2009; and

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

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

WHEREAS, the subject site occupies a through lot located on the south side of Ann Street and the north side of Fulton Street between Nassau Street and William Street, in a C6-4 zoning district; and

WHEREAS, the site is occupied by a two-story

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commercial building; and

WHEREAS, the PCE will occupy 2,970 sq. ft. of floor area, comprising the entire second floor of the existing building; and

WHEREAS, the PCE will be operated as the Papaya Spa; and

WHEREAS, the proposed hours of operation are: 10:00 a.m. to 10:00 p.m. daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since November 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between November 1, 2008 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA062M, dated April 14, 2009; and

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

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

WHEREAS, the Board has determined that the proposed

action will not have a significant adverse impact on the environment; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-4 zoning district within the Special Lower Manhattan District, the establishment of a physical culture establishment on the second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2009"- Four (4) sheets; and *on further condition*:

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, June 9, 2009.

20-09-BZ

APPLICANT – MetroPCS New York, LLC, for Valerie Arms Apt. Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§§73-03, 73-30), to permit in an R3-2 within a C1-2 district, a non-accessory radio tower.

PREMISES AFFECTED – 54-44 Little Neck Parkway, north west of intersection of Little Neck Parkway and Nassau Boulevard, Block 8256, Lot 108, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

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For Applicant: Ben Weisel.

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 January 26, 2009, acting on Department of Buildings Application No. 410098969, reads in pertinent part:

“Communication facility exceeds the 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals as per Section 73-30 ZR;”
and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within a C1-2 (R3-2) zoning district, the proposed construction of a telecommunications facility, which consists of seven panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 32-21; and

WHEREAS a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, and then to decision on June 9, 2009; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall provided testimony in support of this application; and

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

WHEREAS, the subject site is currently occupied by two seven-story residential buildings; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the seven-story residential building located on the southern end of the site, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) five panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet; (ii) two panel antennas mounted to the existing penthouse and extending to a maximum height of six feet above the penthouse; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a steel equipment platform located on the rooftop; (iv) two GPS units attached to the steel equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; 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 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-069Q, dated February 10, 2009; and

HEREAS, 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

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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 a C1-2 (R3-2) zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 32-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 10, 2009"- (9) 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 § 73-70; 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, June 9, 2009.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application March 2, 2009 – Special Permit filed pursuant to §11-411 & §11-412 of the New York City Zoning Resolution to renew for an additional ten (10) years and to extend a use district exception previously granted pursuant to Section 7(e) of the pre-1961 Zoning Resolution, allowing the use of the ground floor of a two-story building located in an R7A zoning district as a contractors' establishment (Use Group 16).

PREMISES AFFECTED – 345-347 East 103rd Street, for North side of East 103rd Street between First and York Avenues, Block1675, Lot 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James P. 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 decision of the Manhattan Borough Commissioner, dated February 23, 2009, acting on Department of Buildings Application No. 110008688, reads in pertinent part:

"Use district exception granted by BSA under section 7(i) of Pre-1961 Zoning Resolution, BSA Cal. No. 958-38-BZ, has expired; seek renewal and extension from BSA;" and

WHEREAS, this is an application pursuant to ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval to permit a contractor's establishment (UG 16) and for a legalization to permit the extension of the contractor's establishment to the second floor of the subject building; and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in the *City Record*, and then to decision on June 9, 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 11, Manhattan, recommends approval of this application; and

WHEREAS, the premises is located on the north side of East 103rd Street, between First Avenue and York Avenue, within an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1938 when, under BSA Cal. No. 958-38-BZ, the Board granted a variance to permit the conversion of part of the first floor of the building, then located in a business use district, to a garage for more than five cars; and

WHEREAS, on June 20, 1950, under BSA Cal. No. 958-38-BZ Vol. II, the Board permitted a change in occupancy from a garage for more than five motor vehicles to a motor vehicle repair shop, for a term of five years; and

WHEREAS, subsequently, the grant was amended to include the entire first floor, and the term of the grant was extended; and

WHEREAS, on May 24, 1966, under BSA Cal. No. 958-38-BZ Vol. III, the Board amended the resolution to permit the use of the premises as a contractor's establishment (UG 16) and extended the term; and

WHEREAS, the term was subsequently extended; most recently, on March 1, 1977, the grant was amended and the term extended for five years, to expire on March 1, 1982; and

WHEREAS, although the term expired, the applicant represents that the use of the site as a contractor's establishment has been continuous; and

WHEREAS, the applicant now proposes to reinstate the prior grant; 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 for a term of not more than ten years; and

WHEREAS, the applicant also seeks to legalize the extension of the contractor's establishment (UG 16) onto the second floor of the subject building; and

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WHEREAS, pursuant to ZR § 11-412, the Board may, in appropriate cases, allow the extension of the use of a building on a premises subject to a pre-1961 variance, provided that the use of the building may not be extended in excess of 50 percent of the floor area of such building occupied or utilized by the use on December 15, 1961, and that no extensions shall be authorized for a new non-conforming use authorized under ZR § 11-413; and

WHEREAS, the applicant represents that the first floor of the subject building, comprised of 4,298 sq. ft. of floor area, was occupied prior to December 15, 1961 pursuant to the variance granted by the Board under BSA Cal. No. 958-38-BZ; and

WHEREAS, because the second floor of the subject building is comprised of 1,163 sq. ft. of floor area, which is less than 50 percent of the floor area occupied on December 15, 1961, the applicant asserts that ZR § 11-412 permits the extension of the use to the second floor of the subject building; and

WHEREAS, the Board notes that, as evidenced in the resolution granted under BSA Cal. No. 958-38-BZ Vol. III, the change in use from a motor vehicle repair shop to a contractor's establishment (UG 16) on May 24, 1966 was not authorized pursuant to ZR § 11-413 and predates a subsequent text amendment allowing a change of use under ZR § 11-413; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

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 11-412 for a reinstatement of a prior Board approval of a contractor's establishment (UG 16) and for a legalization to permit the extension of the contractor's establishment to the second floor of the subject building, within an R7A zoning 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 March 3, 2009"-(5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on June 9, 2019;

THAT the use shall be limited to an electrical, glazing, heating, painting, paper hanging, plumbing, roofing or ventilating contractor's establishment;

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

THAT a certificate of occupancy be obtained by December 9, 2009;

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, June 9, 2009.

287-06-BZ

APPLICANT – Sheldon Lobel, P.C., for BK Corporation, owner.

SUBJECT – Application October 27, 2006 – Variance (§72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

PREMISES AFFECTED – 32-12 23rd Street, 33rd Avenue and Broadway, Block 555, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

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 July 21, 2009, at 1:30 P.M., for decision, hearing closed.

177-07-BZ

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

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

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

COMMUNITY BOARD #7BK

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

220-07-BZ

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

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an

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existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300’ north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 8, 2009 at 1:30 P.M., for deferred decision.

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Robert Pauls and Abigail Patterson.

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 July 14, 2009, at 1:30 P.M., for decision, hearing closed.

97-08-BZ

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

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

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

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

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

APPEARANCES –

For Applicant: Adam Rothkrug and Robert Pauls.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for continued hearing.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X district.

PREMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200’ south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Jerry Iannece, Tom Buscher, Eileen Ring and Kathleen Crumm.

ACTION OF THE BOARD – Laid over without date.

228-08-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Eric Palatnik, Stuart Klein and Martin Cohen.

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 July 21, 2009, at 1:30 P.M., for decision, hearing closed.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and

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second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.

SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.

PREMISES AFFECTED – 2307 Farragut Road/583 East 23rd Street, north east corner of Farragut Road and East 23rd Street, Block 5223, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Francis R. Angelino, Esq., Omar Walrond, Michiyo Ishikawa, Joseph Tarella, Andy Choi and David Leffler.

For Opposition: Richard Silverman and Florence Valentino.

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80' northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR §43-00) and bulk regulations (ZR §52-22) in an M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and Peter Gaito, R.A.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – 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 rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Lois S. Colin, Michael A. Colin and Sanford Goldhaber.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

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50-09-BZ

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building.

The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.