
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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CONTENTS

DOCKET	141
CALENDAR of March 17, 2009	
Morning	142
Afternoon	143

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, February 24, 2009**

Morning Calendar144

Affecting Calendar Numbers:

617-56-BZ	3120 Albany Crescent, Bronx
218-96-BZ	138 East 39 th Street, Manhattan
124-99-BZ	1372 Broadway, Manhattan
74-49-BZ	515 Seventh Avenue, Manhattan
217-03-BZ	142 Pennsylvania Avenue, Brooklyn
885-78-BZ	120 West 25 th Street, Manhattan
771-89-BZ	2078 Richmond Avenue, Staten Island
200-01-BZ	182-15 Hillside Avenue, Queens
19-08-BZY	3871 Amboy Road, Staten Island
270-08-A	221 Betts Avenue, Bronx
271-08-A	221 A Betts Avenue, Bronx
245-08-BZY	219-05 North Conduit Boulevard, Queens
83-08-A	3218 Emmons Avenue, Brooklyn
147-08-BZY	95-04 Allendale Street, Queens

Afternoon Calendar154

Affecting Calendar Numbers:

258-08-BZ	343-349 West 42 nd Street, Manhattan
99-08-BZ	102 Drumgoole Road, Staten Island
161-08-BZ	136 Dover Street, Brooklyn
206-08-BZ	737 Elvira Avenue, Queens
215-08-BZ	1778-1800 Southern Boulevard, Bronx
222-08-BZ	71 Beaumont Street, Brooklyn
253-08-BZ	2623 East 11 th Street, Brooklyn
284-07-BZ	52-54 East 13 th Street, Manhattan
188-08-BZ	35 East 76 th Street, Manhattan
229-08-BZ	866 East 8 th Street, Brooklyn
269-08-BZ	90-10 Grand Central Parkway, Queens
303-08-BZ	34-67 Francis Lewis Boulevard, Queens
304-08-BZ	312-318 East 95 th Street, Manhattan
319-08-BZ	323/25 and 327 6 th Avenue, Manhattan

DOCKETS

New Case Filed Up to February 24, 2009

23-09-BZ

114 Amherst Street, West side of Amherst Street between Hampton Avenue and Oriental Boulevard., Block 8732, Lot(s) 71, Borough of **Brooklyn, Community Board: 15**. 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.

24-09-BZ

78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road., Block 6851, Lot(s) 9,11,12,23,24, Borough of **Queens, Community Board: 8**. Variance to allow the construction of a three-story addition to an existing health care facility, contrary to use regulations

25-09-BZ

277 Canal Street, North west corner of Canal and Broadway., Block 209, Lot(s) 1, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to allow the operation of a physical establishment.

26-09-BZ

97 Crooke Avenue, North side of Crooke Avenue, approximately 164 feet west of Ocean Avenue., Block 5059, Lot(s) 51, Borough of **Brooklyn, Community Board: 14**. Variance (72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district.

27-09-BZY

126 First Place, South side of First Place, 300 feet east of intersection of First Place and Court Street., Block 459, Lot(s) 17, Borough of **Brooklyn, Community Board: 6**. Extension of Time (11-332) to complete construction under the prior zoning district.

28-09-BZ

133 Taaffe Place, East side of Taaffe Place 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue., Block 1897, Lot(s) 04, Borough of **Brooklyn, Community Board: 3**. Variance to permit a multiple dwelling, contrary to use regulations.

29-09-BZ

44 Brunswick Street, Northwest corner of Brunswick Street and Richmond Hill Road., Block 2397, Lot(s) 212, Borough of **Staten Island, Community Board: 2**. Variance to allow a synagogue and Rabbi's residence, contrary to bulk regulations.

30-09-BZ

136-33 37th Avenue, North side of 37th Avenue between Main Street and Union Street., Block 4977, Lot(s) 95, Borough of **Queens, Community Board: 7**. Special Permit (73-44) to reduce parking spaces for commercial and medical offices uses.

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

CALENDAR

MARCH 17, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 17, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

316-73-BZ

APPLICANT – Vassalotti Associates Architects, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Term for the continued operation of a (UG16) Gasoline Service Station (Husky) in an R4 zoning district which expired on January 8, 2009.

PREMISES AFFECTED – 31-02 68th Street, south west corner of 68th Street and 31st Avenue, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3BX

1038-80-BZ

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

SUBJECT – Application February 5, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expired on January 6, 2009.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

252-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Claire & James Ryan, owners.

SUBJECT – Application October 14, 2009 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning District.

PREMISES AFFECTED – 11 Clinton Walk, west side Clinton Walk at intersection of 12th Avenue and Beach 214th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that Section 23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 Zoning District.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street, 480' west from northwest corner of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2-09-A

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

SUBJECT – Application January 5, 2009 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 936 Bayside, south side Bayside east side of the mapped Beach 210th Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

MARCH 17, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 17, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 District.

PREMISES AFFECTED – 70 Wyckoff Avenue, South east corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD # 4BK

312-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (23-141), side yard (23-461) and less than the minimum required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23rd Street, west side of East 23rd between Avenue K and Avenue L, Block 7622, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

316-08-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20th Street, northwest corner of East 20th Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

COMMUNITY BOARD #6M

3-09-BZ

APPLICANT – Duane Morris LLP, by Jon Popin, for Lutheran Social Services of Metropolitan New York, Inc., owner.

SUBJECT – Application January 8, 2009 – Special Permit (§73-19) to allow the conversion of an existing two-story warehouse into a high school with sleeping accommodations. The proposal is contrary to the use requirements of the underlying M1-1 district.

PREMISES AFFECTED – 831 Eagle Avenue, East Avenue, Eagle 159th Street, St. Anns Avenue, East 161st Street, Block 2619, Lot 27, Borough of Bronx.

COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

MINUTES

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

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

SPECIAL ORDER CALENDAR

617-56-BZ

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

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

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

COMMUNITY BOARD #15BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted variance for a parking lot (Use Group 8) with parking and storage of more than five vehicles, which expired on September 27, 2007; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 10, 2009, and then to decision on February 24, 2009; and

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

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

WHEREAS, the site is located on the east side of Albany Crescent, between West 231st Street and West 233rd Street, within an R6 (C1-3, C2-3) zoning district; and

WHEREAS, the site is occupied by a parking lot with 66 spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 9, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a parking lot with parking and storage of motor vehicles for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended several times; and

WHEREAS, most recently, on January 13, 1998, the grant was extended for a term of ten years, which expired on September 27, 2007; and

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

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, at hearing, the Board requested that the applicant screen the subject site from the surrounding residential neighborhood; and

WHEREAS, in response, the applicant submitted a revised site plan depicting the installation of vinyl slat enclosures in the existing chain link fence along the northern, southern and western boundaries of the parking lot, creating a 50 percent opaque effect; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on April 9, 1957, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from September 27, 2007, to expire on September 27, 2017, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 27, 2009”- (1) sheet; and *on further condition*:

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

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

THAT a new certificate of occupancy shall be obtained by August 24, 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; 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.” (DOB Application No. 210076745)

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

218-96-BZ

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

SUBJECT – Application January 16, 2009 – Extension of Time to complete construction/waiver for a one story rear enlargement above the basement of an existing community

MINUTES

use facility (The Armenian Prelacy), which expired on January 11, 2007, located in an R8B zoning district.

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

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete construction of a one-story rear enlargement above the basement of an existing Use Group 4 house of worship/community center, and an extension of time to obtain a certificate of occupancy; and

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

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

WHEREAS, the subject site is located on the south side of East 39th Street between Lexington Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, this application is submitted on behalf of the Eastern Prelacy of the Armenian Apostolic Church (the “Church”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 20, 1997 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit a one-story enlargement above the basement floor at the rear of an existing community facility building; and

WHEREAS, on December 11, 2001, under the subject calendar number, the Board extended the time to complete construction of the enlargement, which expired on December 11, 2003; and

WHEREAS, most recently, on January 11, 2005, the Board extended the time to complete construction of the enlargement and obtain a certificate of occupancy, which expired on January 11, 2007; and

WHEREAS, the applicant represents that, due to continued and unforeseeable adverse economic conditions, the construction has not been completed and the filing of an application for a certificate of occupancy has been delayed; and

WHEREAS, the applicant states that the Church has now obtained firm funding commitments from donors able to undertake the expense of construction; and

WHEREAS, thus, the applicant now requests extensions of time to complete construction and to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 20, 1997, so that as amended this portion of the resolution shall read: “to grant a four year extension of time to complete construction and obtain a certificate of occupancy, to expire on February 24, 2013; *on condition:*

THAT construction shall be substantially complete by February 24, 2013;

THAT a certificate of occupancy shall be obtained by February 24, 2013;

THAT all conditions from the prior resolution 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; and

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

(DOB Application No. 101462347)

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

124-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for BLDG Management Company, Incorporated; New York Sports Club, lessee.

SUBJECT – Application November 8, 2008 – Extension of the term of a previously granted special permit allowing the operation of a physical culture establishment health club in portions of the cellar and first floor of an existing twenty story commercial building located in a C6-6 (Mid) zoning district.

PREMISES AFFECTED – 1372 Broadway, Easterly side of Broadway between West 37th and West 38th Streets, Block 813, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

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 expires on October 26, 2009; and

WHEREAS, a public hearing was held on this

MINUTES

application on January 27, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

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

WHEREAS, the PCE is located on the east side of Broadway between West 37th Street and West 38th Street, in a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is located in portions of the cellar and first floor of a 20-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,191 sq. ft., consisting of 12,033 sq. ft. on the cellar level and 4,158 sq. ft. on the first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 26, 1999 when, under the subject calendar number, the Board granted a special permit to permit a physical culture establishment in the subject building for a term of ten years, to expire on October 26, 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 October 26, 1999, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from October 26, 2009, to expire on October 26, 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 October 26, 2019;

THAT signage shall comply with C6 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. 102108247)

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

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owner.

SUBJECT – Application – Pursuant to (§11-411) of the Zoning Resolution to request an extension of the term of a

variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.

PREMISES AFFECTED – 515 Seventh Avenue, Southeast corner of the intersection of Seventh Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian and Calvin Wong.

For Opposition:

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

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 10 A.M., for continued hearing.

885-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.

SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.

PREMISES AFFECTED – 120 West 25th Street, south side of West 25th Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Paul Selver.

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

MINUTES

771-89-BZ

APPLICANT – Mark D. Lipton, AIA, for William R. Burns, owner.

SUBJECT – Application January 14, 2008 – Extension of Term/waiver of a previously granted Variance (§72-21) to allow the change of use from a single family dwelling to (UG6) office use with accessory parking in an R3-2 zoning district which expired on September 18, 2000.

PREMISES AFFECTED – 2078 Richmond Avenue, west side of Richmond Avenue, 139.09’ south of Rivington Avenue, Block 2102, Lot 98, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Mark D. Lipton.

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

200-01-BZ

APPLICANT – Davidoff Malito & Hutcher LLP by Ron J. Mandel, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 29, 2009 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the enlargement of an existing 11-story and penthouse rehabilitation/long term care facility (Hillside Manor), in an R6A/C2-4 Special Downtown Jamaica District zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Howard Weiss.

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

APPEALS CALENDAR

19-08-BZY

APPLICANT – Edward Lauria, P.E., for Nicholas Valentino, owner.

SUBJECT – Application January 18, 2008 – Extension of

time to complete construction (§ 11-332) of a minor development commenced under the prior zoning district regulations. C4-1 SRD

PREMISES AFFECTED – 3871 Amboy Road, north side of Amboy Road, west of Greaves Avenue, Block 4633, Lot 294, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 to complete construction and obtain a certificate of occupancy for a minor development; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

WHEREAS, the subject site is located on the north side of Amboy Road, between Greaves Avenue and Giffords Lane, in a C4-1 zoning district within the Special South Richmond Development District; and

WHEREAS, the subject site has a frontage of approximately 62’-1” and a depth of approximately 243’-2”, and a total lot area of 16,781 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story 17-unit residential building with commercial office use in the cellar and accessory parking (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 19,984 sq. ft. (1.19 FAR); and

WHEREAS, the development complies with the former C4-1 zoning district parameters; and

WHEREAS, on October 20, 2005, New Building Permit No. 500805667-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on December 21, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt ZR § 32-433, prohibiting ground floor residential uses in C4 zoning districts in Staten Island; 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

MINUTES

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)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n 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, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or 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 January 29, 2009, DOB stated that the New Building Permit was lawfully issued on October 20, 2005, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, on March 7, 2008, DOB conducted an audit of the New Building Permit and issued a notice of intent to revoke the permit (“Letter of Intent”) on March 10, 2008; and

WHEREAS, on July 28, 2008, DOB rescinded the Letter of Intent, noting that the applicant had resolved all of DOB’s objections; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the

owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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 under ZR § 11-332 are those incurred after the permit is issued; and

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of December 21, 2007 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, 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 permit includes 100 percent of the foundation, structural steel, drywells, masonry, roofing, and sewer work, as well as the majority of all remaining work items associated with windows and plumbing; and

WHEREAS, in support of this statement the applicant has submitted the following: construction documents indicating the work completed; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the development’s interior and exterior; 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 permit and before December 21, 2007; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$2,086,500, or approximately 51 percent of the \$4,057,800 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, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

MINUTES

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 New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 500805667-01-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 February 24, 2011.

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

270-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Johnny Ubiles.

SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 Betts Avenue (aka 221B Betts Avenue) west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted

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 from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 200983962F (the “CO”) for a home at the subject site for non-compliance with Special Flood Hazard Area requirements of the Administrative Code of the City of New York (the “Building Code”) and Technical Policy and Procedure Notice # 1/04 (the “TPPN”); and

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

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

WHEREAS, the owner of 221B Betts Avenue testified at hearing; and

WHEREAS, the subject premises is located on the west side of Betts Avenue, north of Gildersleeve Avenue; and

WHEREAS, the site is occupied by a two-story with cellar two-family home classified as Building Occupancy Group J-3; and

WHEREAS, DOB states that the subject premises is located in Special Flood Hazard Area, Zone V, as identified in Reference Standard RS 4-4 and Federal Emergency Management Agency Flood Insurance Rate Map Index No. 3604970022B; and

WHEREAS, the instant appeal concerns whether the subject premises complies with the requirements of the Building Code and TPPN # 1/04 for a new building constructed in a Special Flood Hazard Area; and

Procedural History

WHEREAS, New Building Job Application No. 200983962 (the “Job Application”) for the construction of a two-story with cellar, two-family home at the subject premises was received by DOB on August 30, 2005; and

WHEREAS, DOB issued a permit for the construction of the subject home on December 20, 2005; and

WHEREAS, DOB issued a Temporary Certificate of Occupancy on November 15, 2006 and a final Certificate of Occupancy on February 4, 2008; and

WHEREAS, on September 5, 2008, DOB determined that the plans failed to comply with Special Flood Hazard Area requirements of the Building Code and issued a “15-Day Notice of Intention to Initiate Proceedings to Revoke Certificates of Occupancy” to the owner and architect of the subject premises; and

WHEREAS, DOB states that neither the owner nor the architect of the subject home demonstrated that the findings of the 15-day notice were inaccurate and further, that the previously approved plans have not been amended to comply with the requirements of the Building Code; and

WHEREAS, on October 31, 2008, DOB filed the instant appeal seeking the revocation of the permit; and

Issues Presented
WHEREAS, DOB contends that the permit for the Job Application was issued in error because the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas; and

Compliance with Building Code § 27-317(a)
WHEREAS, pursuant to Building Code § 27-317(a), a building in Occupancy Group J-3 may not be constructed or altered so as to have the lowest floor below the base flood elevation; and

WHEREAS, TPPN #1/04 (2) states that the floor level of any space below the base flood elevation shall be no lower than the level of the adjacent grade on at least one side of a building; and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that the cellar level, which is shown as the lowest floor, has an elevation of 6.0’ (Bronx

MINUTES

Borough datum) which is lower than the base flood elevation of 12.39' (Bronx Borough datum), and is also below the 8'-0" level of the adjacent grade (Bronx Borough datum); and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-317(a) or with TPPN #1/04; and

Compliance with Building Code § 27-317(f)

WHEREAS, pursuant to Section 27-317(f) of the Building Code, permitted structural supports below the base flood elevation in a Special Flood Hazard Area, Zone V, are limited to anchored pilings or columns; and

WHEREAS, DOB states that an enclosure in the space below the base flood elevation is permitted only if such a space is constructed with open lattice "breakaway" walls that are not part of the structural support of the building to which they are attached and that are designed to collapse under specific forces without causing damage to the elevated portion of the building or the supporting foundation system (see Building Code § 27-317(f)(2); see also TPPN # 1/04(3)); and

WHEREAS, DOB contends that the plans submitted with the Job Application indicate that structural supports below the base flood elevation are constructed of solid, non-breakaway walls, rather than the open lattice breakaway walls required by Building Code § 27-317(f); and

WHEREAS, pursuant to TPPN #1/04(4), the certificate of occupancy for buildings within Special Flood Hazard Area, Zone V, must contain language requiring open levels subject to flooding to remain open except to the extent that they are provided with open lattice breakaway walls; and

WHEREAS, DOB represents that the Certificate of Occupancy lacks the language required by TPPN 1/04(4); and

WHEREAS, DOB contends that the construction of the subject home and the language of the Certificate of Occupancy therefore do not comply with Building Code § 27-317(f) or with TPPN #1/04(3) and (4); and

Compliance with Building Code § 27-316

WHEREAS, pursuant to Building Code § 27-316, mechanical equipment and any floor space containing bathroom facilities must be elevated so that the bottom of the lowest horizontal structural element is at least as high as the base flood elevation; and

WHEREAS, the permitted uses of a space below the base flood elevation are parking of vehicles, building access, and building storage (see TPPN #1/04, Attachment A); and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that mechanical equipment and bathrooms are located in the cellar of the subject premises, below the base flood elevation; and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-316 of the Building Code; and

Compliance with Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g)

WHEREAS, pursuant to Building Code § 27-316.1(c); a job application for a building within a Special Flood Hazard

Area must contain a certification by a registered architect or licensed professional engineer that the heating, ventilation, air conditioning, plumbing, and electrical services are located or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, pursuant to Building Code § 27-316.1(e), job applications for buildings within Zone V of a Special Flood Hazard Area must also contain a certification by a registered architect or licensed professional engineer that the design and methods of construction conform with reference standard RS 4-5 and with accepted standards of practice for meeting the requirements of Building Code § 27-317 (f); and

WHEREAS, DOB contends that the Job Application contains neither of the certifications required by Building Code §§ 27-316.1(c) and 27-316.1(e); and

WHEREAS, pursuant to Building Code § 27-316(g) and TPPN #1/04(1), a job application for a building within a Special Flood Hazard Area must also contain a Federal Emergency Management Agency "Elevation Certificate" certifying the elevation of the "lowest floor" of the proposed building; and

WHEREAS, DOB further contends that the Job Application contains no Elevation Certificate; and

WHEREAS, DOB contends that because the certifications required by Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g) and by TPPN #1/04(1) were not included in the Job Application the permit for the subject home was issued erroneously; and

WHEREAS, because the permit for the subject home was issued erroneously, at hearing the Board questioned whether DOB is able to alert a homeowner that his or her building site is located in a Special Floor Hazard Area; and

WHEREAS, DOB responded that the agency was exploring steps to alert permit applicants that their properties are located in flood zones; and

WHEREAS, DOB contends that, because the construction of the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Floor Hazard Areas, the Certificate of Occupancy must be revoked; and

WHEREAS, the Board notes that DOB may not be estopped from correcting an erroneous approval of a building permit (see *Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and

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

WHEREAS, the Board further notes that the owner submitted no evidence into the record refuting the contentions of DOB with respect to the alleged non-compliance with the Special Flood Hazard requirements;

MINUTES

and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject home is non-compliant with the Special Flood Hazard Area requirements of the Building Code and TPPN # 1/04.

Therefore it is Resolved that the application of the Commissioner of the Department of Buildings, dated October 31, 2008, seeking the revocation of Certificate of Occupancy No. 200983962F, is granted.

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

271-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Pedro Febres.

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

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

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 from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 200983971F (the “Certificate of Occupancy”) for non-compliance with Special Flood Hazard Area requirements of the Administrative Code of the City of New York (the “Building Code”) and Technical Policy and Procedure Notice # 1/04 (the “TPPN”); and

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

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

WHEREAS, the owner of 221A Betts Avenue (the “owner”) testified at hearing; and

WHEREAS, the subject premises is located on the west side of Betts Avenue, north of Gildersleeve Avenue; and

WHEREAS, the site is occupied by a two-story with cellar two-family home classified as Building Occupancy Group J-3; and

WHEREAS, DOB states that the subject premises is located in Special Flood Hazard Area, Zone V, as identified in Reference Standard RS 4-4 and Federal Emergency

Management Agency Flood Insurance Rate Map Index No. 3604970022B; and

WHEREAS, the instant appeal concerns whether the subject premises complies with the requirements of the Building Code and TPPN # 1/04 for a new building constructed in a Special Flood Hazard Area; and

Procedural History

WHEREAS, New Building Job Application No. 200983971 (the “Job Application”) for the construction of a two-story with cellar, two-family home at the subject premises was received by DOB on August 30, 2005; and

WHEREAS, DOB issued a permit for the construction of the subject home on December 20, 2005; and

WHEREAS, DOB issued a Temporary Certificate of Occupancy on November 15, 2006 and a final Certificate of Occupancy on February 4, 2008; and

WHEREAS, on September 5, 2008, DOB determined that the plans failed to comply with Special Flood Hazard Area requirements of the Building Code and issued a “15-Day Notice of Intention to Initiate Proceedings to Revoke Certificates of Occupancy” to the owner and architect of the subject premises; and

WHEREAS, DOB states that neither the owner nor the architect of the subject home demonstrated that the findings of the 15-day notice were inaccurate and further, that the previously approved plans have not been amended to comply with the requirements of the Building Code; and

WHEREAS, on October 31, 2008, DOB filed the instant appeal seeking the revocation of the permit; and

Issues Presented

WHEREAS, DOB contends that the permit for the Job Application was issued in error because the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas; and
Compliance with Building Code § 27-317(a)

WHEREAS, pursuant to Building Code § 27-317(a), a building in Occupancy Group J-3 may not be constructed or altered so as to have the lowest floor below the base flood elevation; and

WHEREAS, TPPN #1/04 (2) states that the floor level of any space below the base flood elevation shall be no lower than the level of the adjacent grade on at least one side of a building; and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that the cellar level, which is shown as the lowest floor, has an elevation of 6.0’ (Bronx Borough datum) which is lower than the base flood elevation of 12.39’ (Bronx Borough datum), and is also below the 8’-0” level of the adjacent grade (Bronx Borough datum); and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-317(a) or with TPPN #1/04; and
Compliance with Building Code § 27-317(f)

WHEREAS, pursuant to Section 27-317(f) of the Building Code, permitted structural supports below the base

MINUTES

flood elevation in a Special Flood Hazard Area, Zone V, are limited to anchored pilings or columns; and

WHEREAS, DOB states that an enclosure in the space below the base flood elevation is permitted only if such a space is constructed with open lattice “breakaway” walls that are not part of the structural support of the building to which they are attached and that are designed to collapse under specific forces without causing damage to the elevated portion of the building or the supporting foundation system (see Building Code § 27-317(f)(2); see also TPN # 1/04(3)); and

WHEREAS, DOB contends that the plans submitted with the Job Application indicate that structural supports below the base flood elevation are constructed of solid, non-breakaway walls, rather than the open lattice breakaway walls required by Building Code § 27-317(f); and

WHEREAS, pursuant to TPN #1/04(4), the certificate of occupancy for buildings within Special Flood Hazard Area, Zone V, must contain language requiring open levels subject to flooding to remain open except to the extent that they are provided with open lattice breakaway walls; and

WHEREAS, DOB represents that the Certificate of Occupancy lacks the language required by TPN 1/04(4); and

WHEREAS, DOB contends that the construction of the subject home and the language of the Certificate of Occupancy therefore do not comply with Building Code § 27-317(f) or with TPN #1/04(3) and (4); and
Compliance with Building Code § 27-316

WHEREAS, pursuant to Building Code § 27-316, mechanical equipment and any floor space containing bathroom facilities must be elevated so that the bottom of the lowest horizontal structural element is at least as high as the base flood elevation; and

WHEREAS, the permitted uses of a space below the base flood elevation are parking of vehicles, building access, and building storage (see TPN #1/04, Attachment A); and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that mechanical equipment and bathrooms are located in the cellar of the subject premises, below the base flood elevation; and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-316 of the Building Code; and
Compliance with Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g)

WHEREAS, pursuant to Building Code § 27-316.1(c); a job application for a building within a Special Flood Hazard Area must contain a certification by a registered architect or licensed professional engineer that the heating, ventilation, air conditioning, plumbing, and electrical services are located or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, pursuant to Building Code § 27-316.1(e), job applications for buildings within Zone V of a Special Flood Hazard Area must also contain a certification by a registered architect or licensed professional engineer that the design and methods of construction conform with reference

standard RS 4-5 and with accepted standards of practice for meeting the requirements of Building Code § 27-317 (f); and

WHEREAS, DOB contends that the Job Application contains neither of the certifications required by Building Code §§ 27-316.1(c) and 27-316.1(e); and

WHEREAS, pursuant to Building Code § 27-316(g) and TPN #1/04(1), a job application for a building within a Special Flood Hazard Area must also contain a Federal Emergency Management Agency “Elevation Certificate” certifying the elevation of the “lowest floor” of the proposed building; and

WHEREAS, DOB further contends that the Job Application contains no Elevation Certificate; and

WHEREAS, DOB contends that because the certifications required by Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g) and by TPN #1/04(1) were not included in the Job Application the permit for the subject home was issued erroneously; and

WHEREAS, because the permit for the subject home was issued erroneously, at hearing the Board questioned whether DOB is able to alert a homeowner that his or her building site is located in a Special Flood Hazard Area; and

WHEREAS, DOB responded that the agency was exploring steps to alert permit applicants that their properties are located in flood zones; and

WHEREAS, DOB contends that, because the construction of the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPN #1/04 concerning new construction in Special Flood Hazard Areas, the Certificate of Occupancy must be revoked; and

WHEREAS, at hearing, the owner stated that the cost to comply with the Building Code requirements for construction in a Special Flood Hazard Area would be prohibitively expensive; and

WHEREAS, the Board notes that DOB may not be estopped from correcting an erroneous approval of a building permit (see *Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and

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

WHEREAS, the Board further notes that the owner submitted no evidence into the record refuting the contentions of DOB with respect to the alleged non-compliance with the Special Flood Hazard requirements; and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject home is non-compliant with the Special Flood Hazard Area requirements of the Building Code and TPN # 1/04.

Therefore it is Resolved that the application of the

MINUTES

Commissioner of the Department of Buildings, dated October 31, 2008, seeking the revocation of Certificate of Occupancy No. 200983971F, is granted.

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

245-08-BZY

APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.

SUBJECT – Application October 23, 2008 – Extension of time to complete construction (11-331) of minor development commenced under the prior C2-2/R3-2+ district regulations. C1-1/R3X.

PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Patrick Evans, Kamal F. Saleem, Donovan Richards, Dwight Johnson, Michael Duncan, Jacqueline Kellinfoster, Kim Francis, Pres. Concerned Citizens; Jacques Leundre, Concerned Citizens;, Leroy Gadsden, NAACP; Rev, Charles Norris, Clergy; Jacqueline G. Boyce, James Deleston, Lillian Heard, John C. Joseph and Lorraine Gittens-Bridges.

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 April 7, 2009, at 10 A.M., for decision, hearing closed.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification. R5 SP Sheepshead Bay District.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lisa M. Orrantia.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 10 A.M., for postponed hearing.

147-08-BZY

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

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

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

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hui-Li-Xu and Richard J. Zimmerman.

For Administration: Lisa M. Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

MINUTES

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

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

ZONING CALENDAR

284-07-BZ

CEQR #08-BSA-039M

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee. SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to § 32-10. C6-1 district.

PREMISES AFFECTED – 52-54 East 13th Street, south side of East 13th between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

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, February 24, 2009.

258-08-BZ

CEQR #09-BSA-038M

APPLICANT – Rizzo Group, for Robert G. Friedman, owner; Mid City Gym and Tanning LLC, lessee. SUBJECT – Application October 20, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar in a 41-story mixed-use building. The proposal is contrary to ZR § 32-10. C6-4 district.

PREMISES AFFECTED – 343-349 West 42nd Street, located on 42nd Street, mid-block between 8th Avenue and 9th Avenue, Block 1033, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 10, 2008, acting on Department of Buildings Application No. 104829928, reads in pertinent part:

“Physical culture establishment (PCE) use requires a special permit from the Board of Standards and Appeals under ZR Section 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 Clinton District, the establishment of a physical culture establishment (“PCE”) in the cellar of an existing 41-story mixed-use residential/commercial/community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 3, 1009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

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

WHEREAS, the subject site is located on the north side of West 42nd Street between 8th Avenue and 9th Avenue, in a C6-4 zoning district within the Special Clinton District; and

WHEREAS, the site is occupied by a 41-story mixed-use residential / commercial / community facility building; and

WHEREAS, the PCE will occupy a total of 8,400 sq. ft. of area in the cellar; and

WHEREAS, the PCE will be operated as “Mid City Gymnasium;” and

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

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.; 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

MINUTES

pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA038M, dated December 18, 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 in a C6-4 zoning district within the Special Clinton District, the establishment of a physical culture establishment in the cellar of an existing 41-story mixed-use residential / commercial / community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 29, 2009"-(2) sheets and "Received February 18, 2009"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 24, 2019;

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

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

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

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

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

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

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

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

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

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

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

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district. PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dole.

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

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to

MINUTES

ZR Section 32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ken Barbino.

For Opposition: Michael Gorelick.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

206-08-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.

PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Annapolis Street, Block 15578, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Alfonso Duarte, P.E..

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 March 31, 2009, at 1:30 P.M., for decision, hearing closed.

215-08-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP by Howard S. Weiss, for SoBRO Development Corp., owners.
SUBJECT – Application August 20, 2008 – Variance (§72-21) to allow a new ten (10) story mixed-use building containing ninety eight (98) dwelling units and ground floor retail use; contrary to use regulations (§32-00). C8-3 district.
PREMISES AFFECTED – 1778-1800 Southern Boulevard, intersection of East 174th Street, Boston Post Road and Southern Boulevard, Block 2984, Lots 1 & 7, Borough of Bronx.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Howard Weiss.

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 April 7, 2009, at 1:30 P.M., for decision, hearing closed.

222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

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 March 17, 2009, at 1:30 P.M., for decision, hearing closed.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

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

253-08-BZ

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

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

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

MINUTES

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

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

269-08-BZ

APPLICANT – MetroPCS New York, LLC, for LGA Hotel LLC, owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application November 5, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower.

PREMISES AFFECTED – 90-10 Grand Central Parkway, north side of 23rd Avenue, between 90th Street and 93rd Street, Block 1068, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES –

For Applicant: Steven Mark and Fahd Kananeh.

For Opposition: Dev Viswamath.

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 March 17, 2009, at 1:30 P.M., for decision, hearing closed.

303-08-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciano Calandra, owner; Lou-Cal Auto Service, Inc., lessee.

SUBJECT – Application December 10, 2008 – Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.

PREMISES AFFECTED – 34-67 Francis Lewis Boulevard, northeast corner of 35th Avenue, Block 6077, Lot 43, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

For Opposition: Henry Euler.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

304-08-BZ

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350' feet west of First Avenue, Block 1557, Lot 41, Borough of

Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent, Pamela Clarke, Peter Gisolfi, Mary Hanlon and Stanislaus, Principal.

For Opposition: Michael Kramer.

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

319-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lawrence and Melvin Friedland, owners; IFC Center, lessee.

SUBJECT – Application December 31, 2008 – Special Permit (§73-201) for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

PREMISES AFFECTED – 323/25 and 327 6th Avenue; 14 Cornelia Street, 75' front of 6th Avenue and 54 frontage on Cornelia Street, Block 589, Lots 19, 30, 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver, John Vanco and Larry Bogdanow.

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 March 19, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:00P.M.