
BULLETIN

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33-10-BZ

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39-10-BZ

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40-10-BZ

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

CALENDAR

APRIL 20, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 20, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

199-00-BZ

APPLICANT – John C. Chen, for En Ping Limited, owner; Valentine E. Partner Atlantis, lessee.

SUBJECT – Application March 3, 2010 – Extension of Term of a previously granted Special Permit (73-244) for an Eating and Drinking Establishment (*Club Atlantis*) without restrictions on Entertainment (UG12A) which expired on March 13, 2010. Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 76-19 Roosevelt Avenue, north west corner partly fronting Roosevelt Avenue and 77th Street, Block 1287, Lot 37, Borough of Queens.

COMMUNITY BOARD #3Q

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application February 5, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance which permitted the operation of a Physical culture establishment (Squash Fitness Center) to operate in a C1-4 zoning district, which is set to expired on July 17, 2011; Extension of Time to obtain a certificate of occupancy, which expired on January 28, 2010; Waiver for filing more than 1 year prior to the expiration of the term.

PREMISES AFFECTED – 107-24 37th Avenue aka 37-16 108th Street, Southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

363-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 6002 Fort Hamilton Parkway Partners, owners; Michael Mendelovic, lessee.

SUBJECT – Application March 25, 2010 – Extension of Time to Complete Construction of a previously approved Variance (72-21) to convert an existing industrial building to commercial/residential use which expired on July 19, 2009; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, south of 61st, east of Hamilton Parkway, north of 60th Street, Block 5715, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APRIL 20, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 20, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

308-09-BZ

APPLICANT – Jorge F. Canepa, for Joseph Ursini, owner.

SUBJECT – Application November 20, 2009 – Variance (§ZR 72-21) to legalize a pool located partially within a front yard and allow two parking spaces to be located between the street line and the street wall of the building, contrary to ZR 23-44 and 25-622. R3X zoning district.

PREMISES AFFECTED – 366 Husson Street, corner between Husson Street & Bedford Avenue, Block 3575, Lot 24, Borough of Staten Island

COMMUNITY BOARD #2SI

331-09-BZ

APPLICANT – Slater & Beckerman, LLP, for 141 East 45th Street, LLC, owner; R. H. Massage Services, P.C., lessee.

SUBJECT – Application December 22, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*River View Spa*) located on the second and third floors in an existing three-story building. C5-2.5 zoning district.

PREMISES AFFECTED – 141 East 45th Street, north side of East 4th Street, between Lexington Avenue and Third Avenue, Block 1300, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #6M

19-10-BZ

APPLICANT – Akerman Senterfitt LLP, for Oak Point Property LLC, owner.

SUBJECT – Application February 3, 2010 – Special Permit (ZR§ 73-482) to allow for an accessory parking facility in excess of 150 spaces. M3-1 zoning district.

PREMISES AFFECTED – 100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue, Block 2604, Lot 174, Borough of Bronx.

COMMUNITY BOARD #2BZX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 23, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on April 12, 2008; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and March 2, 2010, and then to decision on March 23, 2010; and

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

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Boerum Place and Dean Street, within a C2-3(R6) zoning district; and

WHEREAS, the site is occupied by a partial two-story and partial one-story building, with a rooftop tennis bubble;

and

WHEREAS, the subject PCE is operated as New York Sports Club, in conjunction with the adjacent two-story building at 96 Boerum Place, which is the subject of a separate special permit under BSA Cal. No. 266-04-BZ; and

WHEREAS, the PCE occupies a total of 15,350 sq. ft. on the first floor, mezzanine level, and roof of the subject mixed-use building; the second floor is occupied by residential use; and

WHEREAS, on April 12, 1988, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE for a term of ten years to expire on April 12, 1998; and

WHEREAS, the Board granted another ten-year extension of term, to expire on April 12, 2008; and

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

WHEREAS, at hearing, the Board requested information about (1) whether an advertising sign for the PCE on a building across Boerum Place complied with zoning district regulations, (2) the history of the building and the tennis bubble, and (3) whether there were any complaints from residents of the building regarding the use of the PCE and directed the applicant to notify the tenants of the application and the hearing; and

WHEREAS, in response to the signage question, the applicant removed the sign and provided photographs reflecting its removal; and

WHEREAS, as to the history of the building and the tennis bubble, the applicant states that the PCE, which originally occupied the site as a squash club in the early 1980s, has occupied the building for more than 20 years, including the tennis bubble; and

WHEREAS, accordingly, the applicant represents that the use pre-dates the occupancy of all of the current residential tenants; and

WHEREAS, additionally, the applicant provided evidence that it notified the residential tenants of the building and submitted a copy of the standard lease, which requires the tenant to acknowledge the existence of the PCE and provides an exchange of complimentary membership; and

WHEREAS, one residential tenant provided testimony in opposition to the application, noting concerns with sound and vibrations; and

WHEREAS, the Board notes that the subject tenant's residency began less than one year ago, long after the establishment of the PCE, and that she appears to have signed a lease acknowledging the existence of the PCE; and

WHEREAS, the applicant represents that residential tenants have the ability to vacate their leases, without penalty; and

WHEREAS, the Board directed the applicant to identify the rooftop tennis bubble, and have it reflected, when it returns to DOB to renew its Certificate of Occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate

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with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 12, 1988, so that as amended this portion of the resolution shall read: "to permit an extension of the special permit for a term of ten years from the expiration of the last grant; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received October 8, 2009"- (2) sheets and "January 14, 2010"- (2) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall expire on April 12, 2018;

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

THAT the applicant shall obtain a new Certificate of Occupancy, which reflects the rooftop tennis bubble use, by March 23, 2011;

THAT DOB shall review the use of the rooftop and the tennis bubble for compliance with relevant regulations, prior to the issuance of a certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

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); 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. 320069778)

Adopted by the Board of Standards and Appeals, March 23, 2010.

16-36-BZ

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

SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Term (§§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.

PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Elizabeth Safian.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

201-01-BZ

APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.

SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

64-07-A

APPLICANT – Stuart A. Klein, for Sidney Frankel, owner.

SUBJECT – Application September 14, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R6 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1704 Avenue N, southeast corner lot at the intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

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For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a single-family dwelling under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on March 23, 2010, after due notice by publication in *The City Record*, and then to decision on March 23, 2010; and

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

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

WHEREAS, the adjacent neighbor submitted written and oral testimony in opposition to the appeal (“the Opposition”), citing concerns that the applicant has performed some of the proposed construction from the adjacent property which has incurred damage as a result and that the applicant has not allowed the Department of Buildings (“DOB”) to inspect the construction; and

WHEREAS, the applicant states that the subject site consists of a 4,000 sq. ft. lot on the southeast corner of the intersection of Avenue N and East 17th Street in Brooklyn; and

WHEREAS, the owner proposes to add 856 sq. ft. of floor area to the side of an existing two-story single-family home with 2,946 sq. ft. of residential floor area; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, the proposed home complies with the former zoning district parameters; and

WHEREAS, however, on April 5, 2006 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the “Midwood Rezoning,” which rezoned the site to R4-1; and

WHEREAS, the home does not comply with the R4-1 district parameters as to the maximum permitted floor area; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on February 12, 2008, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights (the “Initial Vesting Date”); and

WHEREAS, the Board granted the applicant 18 months

to complete construction and obtain a certificate of occupancy, which expired on August 12, 2009; and

WHEREAS, as noted in the previous resolution, Alteration Permit No. 302067867 (hereinafter, the “Alteration Permit”) was lawfully issued by DOB on January 24, 2006, permitting the construction of the subject enlargement, prior to the Rezoning Date; and

WHEREAS, by letter dated January 22, 2010, DOB confirms that the Alteration Permit was lawfully issued; and

WHEREAS, as noted in the previous resolution, a Notice of Violation issued by DOB on July 7, 2006 found that the attic level of the subject building had increased by ten feet over the height approved by the Alteration Permit, contrary to ZR § 11-31; and

WHEREAS, as a result, the Board conditioned its prior approval on the applicant obtaining confirmation from DOB that the as-built conditions comply with the requirements of ZR § 11-31; and

WHEREAS, the Board notes that the applicant provided a Reconsideration Application approved by DOB, confirming that the revised plans comply with the requirements of ZR § 11-31; and

WHEREAS, the applicant states that at the time the Board granted the application, a Stop Work Order was in effect on the property and the status of the job was listed as “on hold” until a Post Approval Amendment related to the site’s compliance with ZR § 11-31 was approved by DOB on May 15, 2009, after which work was permitted to continue on the site; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board observes that it can only consider representations of work performed and expenditures or irrevocable commitments made before the Rezoning Date or after the Initial Vesting Date in a determination as to whether the owner has a common law vested right to complete construction under the prior zoning; and

WHEREAS, thus, work performed or expenditures made after the Rezoning Date, including the work performed until DOB issued a Stop Work Order on September 20, 2006, and before the Initial Vesting Date have not been considered; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new

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zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

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

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date and after the Initial Vesting Date, the owner had completed site preparation, excavation, and foundation work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: concrete pour tickets, cancelled checks, and accounting summaries; and

WHEREAS, the applicant represents that the only work remaining on the subject site is minor finishing work; and

WHEREAS, the Board recognizes that significant work may have been performed after the Rezoning Date or before the Initial Vesting Date; and

WHEREAS, the Board notes that it may only consider work performed and expenditures made pursuant to valid permits; and

WHEREAS, accordingly, the Board has not considered any work performed, or associated expenditures made, after the Rezoning Date and before the Initial Vesting Date for this or the prior application; and

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

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

WHEREAS, the applicant states that prior to the Rezoning Date and after the Initial Vesting Date, the owner expended \$84,001, or approximately 20 percent, out of approximately \$424,500 budgeted for the entire enlargement; and

WHEREAS, again, the Board acknowledges that the applicant has incurred additional expenses for work performed when the permits were not in effect; and

WHEREAS, accordingly, the Board has not considered any expenses that are not associated with permitted work; and

WHEREAS, as proof of the expenditures, the applicant has submitted cancelled checks, and accounting reports; and

WHEREAS, the Board considers the amount of

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

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

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$84,001 incurred prior to the Rezoning Date or after the Initial Vesting Date that would result if this appeal were denied is significant; and

WHEREAS, the applicant states that the inability to construct the proposed enlargement would require the owner to re-design the home; and

WHEREAS, the applicant represents that a complying home would have a maximum floor area of 3,000 sq. ft., due to the R4-1 zoning district’s floor area limitation; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the \$84,001 of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the Rezoning Date; and

WHEREAS, as to the Opposition’s concerns regarding work which took place on its property, the applicant submitted a copy of a court order authorizing the applicant’s workers and contractors to access the Opposition’s property in order to perform work on the subject enlargement; and

WHEREAS, the applicant states that all work which took place on the Opposition’s property was performed pursuant to the court order; and

WHEREAS, as to the Opposition’s concerns that the applicant has prevented DOB inspectors from accessing the site, the applicant represents that a DOB inspector inspected the site on June 3, 2009, and notes that no temporary or final Certificate of Occupancy will be issued for the site until a site inspection takes place; thus, the applicant will not be able to complete the project without allowing DOB to inspect the site.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 302067867, as well as all related permits for

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various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, March 23, 2010.

157-07-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt, LLP, for 55 Eckford Street Brooklyn LLC, owner.

SUBJECT – Application November 23, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/M1-1 zoning district. M1-2 /R6A, M1-2 R6B, MX8 zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford Street, between Driggs Avenue and Engert Avenue, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 10 A.M., for continued hearing.

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse . R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Al Fredericks.

For Administration: Mark Davis, Department of Buildings.

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 20, 2010, at 10 A.M., for decision, hearing closed.

287-09-BZY & 288-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Hooshang Vaghari and Farhad Nobari, owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a major development commenced under the prior R6 zoning. R5

zoning district.

PREMISES AFFECTED – 87-85 & 87-87 144th Street, east side of 144th Street between Hillside Avenue and 85th Avenue, Block 9689, Lot 6 & 7, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 10 A.M., for continued hearing.

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.

SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced under the prior C4-3 zoning district. R6B zoning district

PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 10 A.M., for continued hearing.

7-10-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Jacklyn & Gerard Rodman, lessees.

SUBJECT – Application January 21, 2010 – Reconstruction and enlargement of an existing single family dwelling located within the bed of a mapped street and the upgrade of existing non conforming private disposal system, contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 93 Hillside Avenue, north side of Hillside Avenue 130' east of the mapped Beach 180th Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Laid over to April 20, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 23, 2010
1:30 P.M.**

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

ZONING CALENDAR

256-07-BZ

CEQR #08-BSA-032K

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

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning 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

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 4, 2007, acting on Department of Buildings Application No. 302342775, reads in pertinent part:

“Proposed residential use (Use Group 2) is not permitted in M1-1 district as per ZR 42-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a three-story five-unit residential building, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on June 23, 2009 after due notice by publication in the *City Record*, with continued hearings on August 11, 2009, September 15, 2009, and December 8, 2009, and then to decision on March 23, 2010; 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 8, Brooklyn, recommends disapproval of the application, citing concerns about the high rental price associated with the proposed

dwelling units; and

WHEREAS, the site is located on the south side of Atlantic Avenue, between Ralph Avenue and Buffalo Avenue, within an M1-1 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 100 feet, and a lot area of 2,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building will provide for one dwelling unit on the first floor and two dwelling units on each of the second and third floors; and

WHEREAS, the proposed building will have a total floor area of 4,200 sq. ft. (2.1 FAR); a wall height of 31’-0””; a rear yard of 30’-0””; and five dwelling units (the “Proposed Building”); and

WHEREAS, because the Proposed Building will contain Use Group 2 dwelling units, a variance is required since the M1-1 zoning district permits commercial and manufacturing use but restricts residential use; and

WHEREAS, the applicant represents that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the narrow width of the vacant lot; and (2) the presence of an elevated railway along Atlantic Avenue; and

WHEREAS, the applicant represents that the subject zoning lot is a vacant pre-existing lot with a width of 20’-0””, which cannot feasibly accommodate a modern conforming use; and

WHEREAS, the applicant states that the narrow lot width would result in inefficient, narrow floor plates that would severely limit potential manufacturing or commercial uses on the site; and

WHEREAS, the applicant further states that the subject site is adjacent to an elevated railway along Atlantic Avenue, which constrains the area available for loading and unloading from Atlantic Avenue, thereby further inhibiting the potential of a conforming manufacturing or commercial use at the site; and

WHEREAS, in furtherance of its argument, the applicant provided a land use map reflecting that of the 103 lots fronting on the south side of Atlantic Avenue within the M1-1 zoning district, there are only two lots with 20 feet of frontage that contain commercial uses; one site is an out-of-business used clothing store five blocks north of the subject site, and the other site is a mixed-use building on the subject block with retail use on the first floor and four apartments on the upper floors; and

WHEREAS, the applicant represents that any new construction for commercial and manufacturing uses in the surrounding area have been on lots significantly larger than the subject 2,000 sq. ft. lot; and

WHEREAS, as to the uniqueness of the site, the applicant also submitted a map identifying several vacant lots with widths of 22 feet or less, along with ownership information reflecting that the vast majority of vacant lots with similar widths as the subject site are either part of larger zoning lots or owned in conjunction with adjacent lots that would provide an opportunity to develop the lots with larger buildings

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more conducive to conforming manufacturing or commercial uses; and

WHEREAS, the Board notes that while the subject lot is also adjacent to a lot in common ownership, unlike the other lots identified, the adjacent lot is occupied by a three-story residential building, which would be infeasible to demolish in order to accommodate larger floor plates; and

WHEREAS, the applicant submitted a 1929 Belcher Hyde Atlas excerpt, along with other evidence indicating that the subject site was previously developed with a residential structure and that there is no record of a prior commercial or manufacturing use on the site during the last 100 years; and

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

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right commercial/manufacturing building; (2) a three-unit residential building; and (3) the proposed residential building; and

WHEREAS, the study concluded that neither the conforming manufacturing building nor the three-unit residential building would realize a reasonable return, but that the proposed residential building would realize a reasonable return; and

WHEREAS, at the Board's direction, the applicant also analyzed an as-of-right commercial/retail scenario; and

WHEREAS, the applicant concluded that the conforming commercial use would not realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including adjacent residential buildings, those across the street, and others on the subject block; and

WHEREAS, as to the character of the neighborhood, the applicant provided a land use map reflecting that of the 70 lots on the subject block occupied by buildings, 38 are occupied by residential uses; and

WHEREAS, the two adjacent lots to the east of the subject site are occupied by residential uses; and

WHEREAS, as noted above, the applicant submitted evidence indicating that the subject site was previously developed with a residential structure and that there is no record of a prior commercial or manufacturing use on the site during the last 100 years; and

WHEREAS, the applicant represents that the southern portion of the subject block is within an R6 zoning district, and on September 5, 2007 the City Council approved the Bedford-Stuyvesant South rezoning, which changed the M1-1 district on the opposite side of Atlantic Avenue from the subject site to an M1-1/R7D zoning district; and

WHEREAS, based upon its review of the submitted land use map and its inspection, the Board has determined that the introduction of five dwelling units will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the Board further notes that the proposed building complies with the parameters for a Quality Housing building and would be permitted as-of-right within the M1-1/R7D zoning district mapped directly across Atlantic Avenue from the site; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's historic lot dimensions; and

WHEREAS, the Board finds that this proposal, which fits within a permitted building envelope, is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 08BSA032K, dated February 24, 2010; and

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

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

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hazardous materials, air quality and noise impacts; and

WHEREAS, DEP determined on January 9, 2008 that based on the findings of the Phase I report there are no hazardous materials issues and a Phase II report was not necessary; and

WHEREAS, DEP reviewed the applicant's air permit searches and field survey of surrounding industrial and auto-related uses within a 400-ft. radius of the subject site and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, based on the results of noise monitoring, a window-wall noise attenuation of 40 dBA with an alternate means of ventilation are proposed in order to achieve an interior noise level of 45 dBA; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, a three-story five-unit residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 14, 2010" – Nine (9) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,200 sq. ft. (2.1 FAR); an open space ratio of 30 percent; a wall height of 31'-0"; a rear yard of 30'-0"; and five dwelling units, as indicated on the BSA-approved plans;

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

THAT 40 dBA of window-wall noise attenuation with an alternate means of ventilation shall be provided in the proposed building;

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

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

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, March 23, 2010.

254-08-BZ

CEQR #09-BSA-034K

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

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district. 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

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 23, 2010, acting on Department of Buildings Application No. 301345809 reads, in pertinent part:

- “1. Proposed plans are contrary to ZR 42-11 in that the proposed use does not comply.
2. Proposed plans are contrary to ZR 43-122 in that the proposed floor area exceeds the maximum permitted.
3. Proposed plans are contrary to ZR 43-43 in that the proposed wall height exceeds the maximum.
4. Proposed plans are contrary to ZR 43-43 in that the proposed stories exceeds the maximum permitted.
5. Proposed plans are contrary to ZR 43-43 in that the proposed sky exposure plane is not in compliance.
6. Proposed plans are contrary to ZR 43-43 in that the required open area is less than the required.
7. Proposed plans are contrary to ZR 43-301 in that the required open area is less than the required.
8. Proposed plans are contrary to ZR 43-26 in that the proposed rear yard is less than the required;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M1-1 zoning

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district, the legalization and enlargement of an existing yeshiva which does not conform to district use regulations or comply with relevant bulk regulations, contrary to ZR §§ 42-00, 43-122, 43-43, 43-301, and 43-26; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on August 25, 2009, December 15, 2009, and February 9, 2010 and then to decision on March 23, 2010; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, with the condition that sufficient on-site garbage storage is provided to accommodate all garbage between pick-up days and that the applicant put a collection receptacle on the street to be emptied by the applicant; and

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

WHEREAS, the subject site is located on the west side of East 15th Street, between Locust Avenue and Avenue L, within an M1-1 zoning district; and

WHEREAS, the site is currently occupied by a one-story yeshiva building; and

WHEREAS, the applicant proposes to legalize the existing building and construct a three-story enlargement; and

WHEREAS, the proposed use is not permitted in the subject M1-1 zoning district and the proposed bulk exceeds the complying building envelope, thus the applicant seeks a variance for the enlargement; and

WHEREAS, the applicant originally proposed to construct a four-story building with a floor area of 42,721 sq. ft. (3.6 FAR) and no yards or setbacks; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided an interim plan for a four-story yeshiva with a floor area of 41,600 sq. ft. (3.5 FAR), and a side setback along the northern lot line with a width of 4'-0" above the first floor, before further revising the proposal to reflect the current proposal; and

WHEREAS, the current proposal reflects the following non-compliances: a floor area of 38,670 sq. ft. (28,800 sq. ft. is the maximum permitted); an FAR of 3.2 (2.4 FAR is the maximum permitted); a wall height of 54'-1" (35'-0" is the maximum permitted wall height); four stories (three stories is the maximum permitted); encroachment into the sky exposure plane; no open area along the northern side of the site which coincides with an R5 zoning district boundary (an open area with a width of 15'-0" is required along a portion of an M1-1 zoning district that coincides with an R5 zoning district); and no rear yard (a rear yard with a minimum depth of 20'-0" is required); and

WHEREAS, the proposal also provides for a rear setback with a depth of 14'-0" above the second floor and a side

setback along the northern lot line with a width of 8'-0" above the first floor; and

WHEREAS, the proposal provides for the following uses: (1) a *beis medrash*/synagogue, cafeteria, lecture rooms, offices, garbage room, bathrooms, and lobby space on the first floor; (2) an upper synagogue, gymnasium, exercise room, locker room, classrooms, bathrooms, and offices on the second floor; (3) classrooms, bathrooms, and offices on the third floor; and (4) a library, computer lab, science lab, offices, teachers' lounge, classrooms, bathrooms, and storage space on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) relieving overcrowded classroom conditions; and (3) providing a recreational area for students; and

WHEREAS, the applicant represents that the existing one-story yeshiva has approximately 250 enrolled day students and approximately 200 enrolled evening students and that the building is no longer adequate to accommodate the Yeshiva's current and projected enrollment; and

WHEREAS, the applicant states that the existing building contains only two classrooms and the Yeshiva is forced to conduct much of its religious based educational classes in its two larger synagogue spaces in order to accommodate the current enrollment; and

WHEREAS, the applicant represents that, due to the current spatial constraints, there is a waiting list of approximately 99 students for the Yeshiva; and

WHEREAS, the proposed building will allow the Yeshiva to accommodate its current enrollment as well as its projected enrollment of approximately 500 day students and 350 evening students; and

WHEREAS, the applicant represents that there are five separate divisions associated with the Yeshiva: (1) the Morning Division; (2) the Post High School Division; (3) the Fifth through Eighth Grade Division; (4) the Ninth through 12th Grade Division; and (5) the Evening Division; and

WHEREAS, the applicant submitted the anticipated schedules of each division and the hours of the day in which there will be simultaneous occupancy of the building by the different divisions; and

WHEREAS, the applicant concludes that from 7:30 a.m. through 7:30 p.m., a minimum of 352 students and a maximum of 526 students are anticipated to occupy the proposed building; and

WHEREAS, thus, the applicant represents that throughout the majority of the day, the proposed building will be occupied at or near capacity, with every classroom in use; and

WHEREAS, the applicant represents that the requested floor area, height, open space, and rear yard waivers are necessary to accommodate the space needs associated with the projected student body; and

WHEREAS, the applicant states that the lack of classrooms in the Yeshiva's existing building result in

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overcrowded conditions; and

WHEREAS, the applicant represents that the proposed enlargement is necessary in order to provide a sufficient number of classrooms that will accommodate at least 22 students per classroom, which is the ideal number of students per classroom to meet the programmatic needs of the Fifth through Eighth Grade Division and the Ninth through 12th Grade Division, which require more individualized supervision; and

WHEREAS, the applicant states that the existing building does not provide for a gymnasium or any other recreational space for the students; and

WHEREAS, the applicant represents that the proposed enlargement will provide the space necessary to include a gymnasium and exercise room on the second floor; and

WHEREAS, the applicant concludes that the requested floor area, height, open space and rear yard waivers are necessary to accommodate the required number of classrooms as well as auxiliary uses such as dining and recreation space, a library, a *beis medrash*, stairwells, restrooms, and office space; and

WHEREAS, the applicant represents that the proposed open space waivers are also necessary to provide a large enough footprint to accommodate the *beis medrash* and the cafeteria, along with required classroom and office space on the first floor of the proposed building; and

WHEREAS, the Board notes that the applicant could have applied for a special permit for the subject site pursuant to ZR § 73-19 which would authorize the proposed use in the subject M1-1 zoning district, but the requested bulk waivers prevent it from coming under the special permit; and

WHEREAS, the applicant represents that the special permit would allow an FAR of 2.4 for the proposed community facility use, and because the applicant is enlarging the existing building which does not provide a cellar, additional square footage is required above what would be permitted by the special permit because certain program space that could otherwise be accommodated in the cellar must be placed above grade; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning

regulations; and

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

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

WHEREAS, the applicant notes that the proposed use is permitted as-of-right in the R5 zoning district which borders the northern lot line of the site, and in the nearby R5B and R7A zoning districts located to the east and south of the site, respectively; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there are four-story schools located both one block south and one block east of the subject site; and

WHEREAS, the applicant states that the proposed building will be similar in height to the adjacent four-story residential building to the north of the site; and

WHEREAS, the applicant notes that it is providing a rear setback with a depth of 14'-0" above the second floor and a side setback along the northern lot line with a width of 8'-0" above the first floor, thereby providing access to natural light in each of the proposed classrooms and minimizing any impact of the proposed enlargement on surrounding uses; and

WHEREAS, the Board notes that in the subject M1-1 zoning district, if any side yard is provided, it must have a minimum width of 8'-0"; thus, the 8'-0" side setback relates to that condition; and

WHEREAS, the Board further notes that in the surrounding residential districts, the proposed community facility use would be allowed as a permitted obstruction in the rear yard up to a height of one-story or 23 feet; thus, only a small portion of the rear of the building would be prohibited in one of the surrounding residential districts; and

WHEREAS, the applicant represents that no adverse traffic impacts will result from the proposed legalization and enlargement; and

WHEREAS, the applicant notes that the Yeshiva has been operating at the site for approximately seven years with no harmful effects on traffic; and

WHEREAS, the applicant states that the Yeshiva does not utilize any school buses because all of the students are at least ten years old and many are significantly older and are able to commute independently; and

WHEREAS, the applicant further states that approximately 70 percent of the students arrive by public transportation, approximately 25 percent of the students reside in the immediate surrounding community and travel on foot, and approximately five percent arrive by bicycle; and

WHEREAS, the applicant represents that, depending on weather conditions, some parents may drop students off by car,

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but that this number does not exceed approximately 15 vehicle drop-offs even on the busiest days; and

WHEREAS, the applicant notes that a student drop-off area is reflected on the plans and that staff from the Yeshiva will be outside during times when students arrive and depart to assist them and ensure that pickup and drop-off from the school are performed in a safe and orderly manner; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated January 28, 2009, indicating that it has no objection to the proposed legalization and enlargement and will prepare a school map with additional signage and markings upon approval of the application; and

WHEREAS, as to the concerns raised by the Community Board regarding garbage storage, the applicant states that garbage will be stored indoors and will be collected by a private collection company three days per week; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of the Yeshiva at the site; and

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

WHEREAS, as noted above, the applicant originally proposed to construct a four-story building with a floor area of 42,721 sq. ft. (3.6 FAR) before revising its proposal to provide for an interim plan for a four-story building with a floor area of 41,600 sq. ft. (3.5 FAR), and a side yard along the northern lot line with a width of 4'-0" above the first floor; and

WHEREAS, at the Board's direction, the applicant further revised its proposal, which resulted in the subject four-story yeshiva with a floor area of 38,670 sq. ft. (3.2 FAR), a rear setback with a depth of 14'-0" above the second floor, and a side setback along the northern lot line with a width of 8'-0" above the first floor; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 09BSA034K, dated March 19, 2010; and

WHEREAS, the EAS documents that the project as

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

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

WHEREAS, DEP has reviewed the sampling results of the Phase II Investigation Report; and

WHEREAS, DEP has concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Construction Health and Safety Plan ("CHASP") is submitted to DEP prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, the legalization and enlargement of an existing yeshiva, which does not conform with applicable zoning use regulations or comply with relevant bulk regulations, contrary to ZR §§ 42-00, 43-122, 43-43, 43-301 and 43-26, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 22, 2010" – Thirteen (13) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: four stories, a floor area of 38,670 sq. ft. (3.2 FAR); and a wall height of 54'-1"; as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor

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shall submit to DEP a CHASP and shall obtain a letter of approval from DEP for the CHASP;

THAT no commercial catering use shall take place onsite;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 23, 2010.

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee. SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) to reinstate previously granted variance which expired on December 7, 1999; amendment to change use from a gasoline service station (UG16B) to automotive repair establishment (UG16B); Waiver of the Boards Rules. C1-3/R6A & R5B (Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 2, 2009. acting on Department of Buildings Application No. 320003296, reads in pertinent part:

“An auto repair facility (UG 16) is not permitted in C1-3/R6A zoning district and is contrary to Section ZR 32-00.

The prior variance (Board of Standards and Appeals calendar #700-41-BZ Vol. II) has expired”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an amendment to legalize the change in use from a gasoline service station to an automotive repair station, pursuant to ZR §§ 11-411 and 11-413; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with continued hearings on January 26, 2010 and February 23, 2010, and then to decision on March 23, 2010; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application; and

WHEREAS, the site is located at the northeast corner of Third Avenue and 94th Street; and

WHEREAS, the site is located partially within a C1-3 (R6A) zoning district and partially within an R5B zoning district, within the Special Bay Ridge District and is occupied by an automotive repair station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1941 when, under BSA Cal. No. 700-41-BZ, the Board granted a variance permitting a parking lot for more than five vehicles; and

WHEREAS, on December 7, 1954, the Board permitted a change in use from parking lot to gasoline service station with parking and storage of motor vehicles for a term of 15 years; and

WHEREAS, the grant was subsequently modified and extended at various times; and

WHEREAS, most recently, on February 13, 1990, the grant was amended to extend the term for ten years from the expiration of the prior grant, to expire on December 7, 1999; and

WHEREAS, the applicant now seeks to reinstate the variance, granted under BSA Cal. No. 700-41-BZ and to amend the grant to reflect a change in use from a gasoline service station to an automotive repair station; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant represents that there has not been an enlargement to the zoning lot; and

WHEREAS, the applicant represents that the automotive-related (Use Group 16) use has been continuous since 1941 and that the failure to renew the variance was an administrative oversight, due, in part, to a change in ownership; and

WHEREAS, pursuant to ZR § 11-413, the Board may approve a change from one non-conforming use to another non-conforming use, under certain conditions; and

WHEREAS, as to the change in use, the applicant represents that in 2004, Exxon-Mobil discontinued operation of the gasoline service station at the site; and

WHEREAS, accordingly, it removed the gasoline tanks and remediated the site, but no other changes were made to the site or the garage building; and

WHEREAS, the current applicant operates an automotive repair station at the site; and

WHEREAS, the applicant notes that the entire use is located within the C1-3(R6A) portion of the site and that the small portion at the rear of the site located within the R5B

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zoning district is vacant; and

WHEREAS, at hearing, the Board requested that the applicant: (1) provide a vehicle circulation plan; (2) reduce the width of the curb cuts; and (3) provide a signage analysis; and

WHEREAS, in response, the applicant provided: (1) a revised parking layout, which reflects a reduction in the number of parking spaces from 28 to 21; (2) a revised site plan, which reflects the reduction in the widths of the two curb cuts on Third Avenue from 30 feet to 16 feet, each and the elimination of the curb cut on 94th Street; and (3) a signage analysis which reflects that there is an overage of nine sq. ft. for the signage with frontage on Third Avenue; the applicant notes that the sign is non-illuminated, is set back 70 feet from the street, and that the portions of the sign occupied by text comply with zoning district sign limitations; and

WHEREAS, the Board determined that the applicant's modifications and analysis were responsive to its requests; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a reinstatement and change in use are appropriate with certain conditions as set forth below; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, as amended, and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval of an gasoline service station and the legalization of a change in use from gasoline service station to automotive repair station; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 22, 2009"-(2) sheets and "February 2, 2010"-(1) sheet; and *on further condition*:

THAT this grant shall be for a term of ten years to expire on March 23, 2020;

THAT signage be limited to that which is reflected on the approved plans and the signage analysis;

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

THAT a certificate of occupancy shall be obtained by March 23, 2011;

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."

Adopted by the Board of Standards and Appeals, March 23, 2010.

329-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yevgenya Loffe, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 26 Falmouth Street, Block 8744, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 24, 2009, acting on Department of Buildings Application No. 320049602, reads:

“Proposed plans are contrary to ZR 23-141(a) floor area ratio (FAR) exceeds the permitted 50%,” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on March 2, 2010, and then to decision on March 23, 2010; and

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

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

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

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 1,921 sq. ft. (0.32 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,921 sq. ft. (0.32 FAR) to 5,462 sq. ft. (0.91 FAR); the maximum floor area permitted is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the Board notes that the proposed enlargement is located only at the front and a portion of the rear of the site, and that no waivers are required for the

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enlargement besides the subject FAR waiver; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 9, 2010"-(18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall include: a maximum floor area of 5,462 sq. ft. (0.91 FAR); lot coverage of 31 percent; a wall height of 21'-0"; and a total height of 35'-0", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, March 23, 2010.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

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 20, 2010, at 1:30 P.M., for decision, hearing closed.

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 1:30 P.M., for continued hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

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ACTION OF THE BOARD – Laid over to April 20, 2010, at 1:30 P.M., for continued hearing.

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200’ south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 April 20, 2010, at 1:30 P.M., for decision, hearing closed.

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 April 27, 2010, at 1:30 P.M., for decision, hearing closed.

327-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 255 Butler, LLC, owner.

SUBJECT – Application December 17, 2009 – Special Permit (§73-19) to allow a Use Group 3 charter school (*Summit Academy*) with first floor retail use in an existing warehouse. M1-2 zoning district.

PREMISES AFFECTED – 255 Butler Street, corner lot on

Nevins Street between Butler and Baltic Streets, Block 405, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Richard Lobel and Robert Klein.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 1:30 P.M., for continued hearing.

332-09-BZ

APPLICANT – Moshe M. Friedman, for Mordechai Treff, owner.

SUBJECT – Application December 22, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home, contrary to floor area and open space (§23-141(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1462 East 27th Street, west side 320’ north of intersection of East 27th Street and Avenue O, Block 7680, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

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 13, 2010, at 1:30 P.M., for decision, hearing closed.

9-10-BZ

APPLICANT – Eric Palatnik, P.C., for Ching Kuo Chiang, owner.

SUBJECT – Application January 22, 2010 – Variance (§72-21) to allow a restaurant use in an existing building, contrary to §22-00. R1-2 zoning district.

PREMISES AFFECTED – 231-10 Northern Boulevard, Northwest corner of 232nd Street, Block 8164, Lot 30, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: David Brody and Henry Euler.

ACTION OF THE BOARD – Laid over to April 27, 2010, at 1:30 P.M., for continued hearing.

14-10-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Cooper Square Associates (LP), owners.

SUBJECT – Application January 29, 2010 – Special Permit (§73-19) to allow a Use Group 3 school (*Grace Church High School*). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, west side

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of Cooper Square, 326'-9" south of Astor Place, Block 544,
p/o 38, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Douglas Evans, Shelly Friedman, Joyce Kuh
and Sarah Hynes.

ACTION OF THE BOARD – Laid over to April 27,
2010, at 1:30 P.M., for continued hearing.

18-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Fifty East Forty-
Second Company, LLC, owner; East 42nd Street Fitness,
LLC d/b/a Lucille Roberts, lessee.

SUBJECT – Application February 2, 2010 – Special Permit
(\$73-36) to allow a physical culture establishment (*Lucille
Roberts*) in the cellar and a portion of the first floor in an
existing 26-story building. C5-3 zoning district.

PREMISES AFFECTED – 50 East 42nd Street, Southeast
corner of Madison Avenue, Block 1276, Lot 51, Borough of
Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to April 13,
2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.