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DIRECTORY

OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006
HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006
BSA WEBPAGE @ http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 788-8500
FAX - (212) 788-8769

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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

MAY 11, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 11, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

887-54-BZ
APPLICANT – Eric Palatnik, Esq., for 218 Bayside Operating LLC, owner.
SUBJECT – Application March 5, 2010 – Extension of Term (11-411) for the continued use of Gasoline Station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expires on September 23, 2010. C2-2/R6B zoning district.
PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Street, Block 6321, Lot 21, Borough of Queens.
COMMUNITY BOARD #11Q

102-95-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for The Argo Corporation as Agent for 50 West 17 Realty Company, owner; Renegades Associates d/b/a Splash Bar, lessee.
SUBJECT – Application March 8, 2010 – Extension of Term of a previously granted Special Permit (§73-244) for a UG12 Eating and Drinking Establishment (Splash) which expired on March 5, 2010. C6-4A zoning district.
PREMISES AFFECTED – 50 West 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78-20 67th Road, Borough of Manhattan.
COMMUNITY BOARD #5M

189-96-BZ
APPLICANT – John C. Chen, for Ping Yee, owner; Edith D'Angelo-Cnandonga, lessee.
SUBJECT – Application March 15, 2010 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2010. C2-3/R6 zoning district.
PREMISES AFFECTED – 85-12 Roosevelt Avenue, south side of Roosevelt Avenue 58' eastside of Forley Street, Block 1502, Lot 3, Borough of Queens.
COMMUNITY BOARD #4Q

4-00-BZ
APPLICANT – Eric Palatnik, P.C., for 243 West 30th Realty, LLC, owner; West Garden Incorporated, lessee.
SUBJECT – Application March 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a Physical Culture Establishment (West Garden) which expires on May 30, 2010. M1-5 zoning district.
PREMISES AFFECTED – 243 West 30th Street, north side of West 30th Street, east of 8th Street, Block 780, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M

103-05-A
APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.
SUBJECT – Application April 20, 2010 – Remand form the Appellate Division for a determination on the issue of whether DOB issued the permit in error based on alleged misrepresentations made by the owner during the permit application process with respect to the plans to demolish the existing home and to construct a new home on a different portion of the lot.
PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.
COMMUNITY BOARD #2SI

APPEALS CALENDAR

89-07-A thru 95-07-A
APPLICANT – NYC Board of Standards and Appeals
OWNER: Pleasant Plains Holding LLC
SUBJECT – Application for dismissal for lack of prosecution – Proposal to build three-two family and one-one family homes located within the bed of a mapped street (Thornycroft Avenue) contrary to Section 35 of the General City Law. R3-2 zoning district. Series cases 89-07-A thru 95-07-A.
PREMISES AFFECTED – 460-480 Thornycroft Avenue and 281 Oakdale Street, Staten Island, Block 5238, Lot 7, Borough of Staten Island.
COMMUNITY BOARD #3SI

43-08-A
APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to General City Law Section 35. Series case - 43-0-A, 3-10-A, 4-10-A.
PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.
COMMUNITY BOARD #7Q

CALENDAR

3-10-A - 4-10-A
APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35 . R2A zoning district.
PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.
COMMUNITY BOARD #7Q

193-09-A
APPLICANT – Slater & Beckerman, LLP, for Margaret Sausa, owner.
SUBJECT – Application June 11, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R5 Zoning district . R4-1 Zoning district.
PREMISES AFFECTED – 78-46 79th Place, west side of 79th Place, between Myrtle Avenue and 78th Avenue, Block 3828, Lot 73, Borough of Queens.
COMMUNITY BOARD #5Q

MAY 11, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 11, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

6-09-BZ
APPLICANT – Rampulla Associate Architects, for Joseph Romano, owner.
SUBJECT – Application January 2, 2009 – Variance (§72-21) to permit the legalization of an existing Automotive Repair Facility (UG 16B), contrary to ZR §32-10. C4-1 (Special South Richmond Development District & Special Growth Management District) zoning district.
PREMISES AFFECTED – 24 Nelson Avenue, south side from the corner of Nelson Avenue & Giffords Glenn, Block 5429, Lot 29 & 31, Borough of Staten Island.
COMMUNITY BOARD #3SI

189-09-BZ
APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Variance (§72-21) to permit the legalization of the existing mosque and Sunday school. The proposal is contrary to use and maximum floor area ratio (42-00 and 43-12). M3-1 zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI

190-09-A
APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Legalization of an existing mosque constructed within the bed of a mapped street contrary to General City Law Section 35. M3-1 Zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI

27-10-BZ
APPLICANT – Eric Palatnik, P.C., for Vadim Rabinovich, owner.
SUBJECT – Application March 1, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (23-141); side yards (23-461) and less than the required rear yard (23-47). R3-1 zoning district.
PREMISES AFFECTED – 117 Norfolk Street, between Shore Parkway and Oriental Boulevard, Block 8757, Lot 47, Borough of Brooklyn.
COMMUNITY BOARD #15BK

30-10-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Susan Shalitzky, owner.
SUBJECT – Application March 8, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (23-141) and less than the required rear yard (23-47). R-2 zoning district.
PREMISES AFFECTED – 1384 East 22nd Street, west side of East 22nd Street, between Avenues M and N, Block 7657, Lot 56, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, APRIL 20, 2010
10:00 A.M.

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

SPECIAL ORDER CALENDAR

1045-67-BZ
APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.
SUBJECT – Application October 30, 2009 – Extension of term of a variance (§72-21) for an accessory parking lot to be used for adjoining commercial uses, which expired on June 27, 1998; waiver of the Rules; and an Amendment to eliminate the term. R2 zoning district
PREMISES AFFECTED – 160-10 Crossbay Boulevard, Crossbay Boulevard between 160th Avenue and 161st Avenue, Block 14030, Lot 6, 20, Borough of Queens.
COMMUNITY BOARD #10Q
APPEARANCES –
For Applicant: Michael A. Cosentino and Tony Cosentino.
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 May 18, 2010, at 10 A.M., for decision, hearing closed.

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 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
APPEARANCES –
For Applicant: John C. Cheng
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 May 11, 2010, at 10 A.M., for decision, hearing closed.

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 variance (§72-21) to allow a physical culture establishment (*Squash Fitness Center*) to operate in a C1-4 zoning district, which will expire on July 17, 2011; Extension of Time to obtain a certificate of occupancy, which expired on January 28, 2010; Waiver of the Rules.
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
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

121-02-BZ
APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.
SUBJECT – Application November 11, 2010 – Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.
Amendment (§73-11) to a special permit (§73-11) for an enlargement of a Physical Culture Establishment. C8-2 zoning district.
PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #10BK
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 May 11, 2010, at 10 A.M., for decision, hearing closed.

369-03-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.
SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.
PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –

For Applicant: Fredrick A. Becker.
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 May 25, 2010, at 10 A.M., for decision, hearing closed.

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 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
APPEARANCES –
For Applicant: Tzvi 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 May 11, 2010, at 10 A.M., for decision, hearing closed.

58-07-BZ
APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner.
SUBJECT – Application October 27, 2009 – Amendment to previously granted variance for a residential building to include two additional objections: dwelling unit size (§23-23) and side yard regulations (§23-461(a). R3A zoning district.
PREMISES AFFECTED – 18-02 Clintonville, Clintonville and 18th Avenue, Block 4731, Lot 9, Borough of Queens.
COMMUNITY BOARD #7BK
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 May 18, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

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: Albert Fredericks.
For Opposition: Mark Davis, Department of Buildings.
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, the appeal comes before the Board in response to a Final Determination letter dated July 13, 2009 and affirmed on September 8, 2009, from the Manhattan Borough Commissioner of the Department of Buildings ("DOB") (the "Final Determination") addressed to a representative of the subject property owner, with respect to DOB Application No. 110193102; and

WHEREAS, the Final Determination states, in pertinent part:

> Article 16 of the General Municipal Law ('GML') limits development of subject buildings to low rise structures with one to four dwelling units. As your client's proposed development is more than 75 feet in height, it is a 'high rise' as defined in the New York City Building Code and thus not in compliance with the requirements of the GML, the applicability of which, to the subject property has been confirmed by the Court of Appeals decision in 328 Owners Corp. v. 330 West Oaks Corp. and the City of New York, reported at 8 N.Y. 3d 372 (2007); and

WHEREAS, a public hearing was held on this appeal on January 26, 2010, after due notice by publication in *The City Record*, with a continued hearing on March 23, 2010, and then to decision on April 20, 2010; and

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

WHEREAS, DOB and the building owner, 330 West 86th Street LLC, (the "Appellant") have been represented by counsel throughout this appeal; and

WHEREAS, during the hearing process, Board staff

reached out to HPD to inquire if it had a direct response to the matters of the appeal; and

WHEREAS, HPD ultimately submitted on the matters raised during the appeal, in support of DOB's position as expressed through its submissions and testimony; and

Procedural History

WHEREAS, the subject appeal concerns the proposed construction of a 17-story (including penthouse) four-unit building at 330 West 86th Street on a site that is currently occupied by a five-story eight-unit building, within an R10A zoning district; and

WHEREAS, the site is the subject of a 1999 Urban Development Action Area Project ("UDAAP"), which, at the Department of Housing Preservation and Development's ("HPD") request, the City, which had acquired the site through an *in rem* proceeding, conveyed to the then-tenants – organized as 330 West Oaks Corp. ("Oaks Corp.") – through the accelerated UDAAP process; and

WHEREAS, in approving the project, City Council waived the otherwise applicable requirements that a UDAAP initiative be part of a designated Urban Development Action Area ("UDAA") and undergo the more extensive Urban Land Use Review Procedure ("ULURP") review; and

WHEREAS, in 2001, Oaks Corp. sold the building to the Appellant; and

WHEREAS, in anticipation of that sale, the cooperative corporation that owns the adjacent building to the east at 328 West 86th Street ("328 Owners Corp."), commenced litigation against Oaks Corp. and the City asserting that (1) the site could only be used for rehabilitation or conservation of the existing building or the construction of a new one to four unit dwelling, (2) the new owner must adhere to the restrictions associated with the grant and the original owner, and, in the alternative, (3) the City's conveyance to Oaks Corp. should be declared null and void; 328 Owners Corp. added the Appellant as a party to the litigation after it acquired the site; and

WHEREAS, the City asserted cross claims that (1) the site could only be used for rehabilitation or conservation of the existing building and (2) the owner and all successors must be restricted to using the site as described in the associated deed (the "Deed"); and

WHEREAS, the Court of Appeals, by decision dated April 3, 2007, determined that (1) there is a restriction limiting the use of the property to the rehabilitation or conservation of the building or the construction of a new one to four unit building, and (2) such a restriction is binding on subsequent owners of the site, including the Appellant (although the Court states that a property owner may seek to have the restrictions extinguished, pursuant to Real Property Actions and Proceedings Law § 1951, so that they would not run in perpetuity); and

WHEREAS, the Court noted that Article 16 of the General Municipal Law ("GML"), which sets forth the UDAA Act, should be read into the Deed, but that neither the Deed nor the GML limits the construction on the site to conservation of the existing building; and

WHEREAS, the outstanding question about the effective period of the Deed restrictions is not the subject of this appeal, which is limited to the height of the building; and

WHEREAS, after the Court of Appeals decision, the Appellant filed an application at DOB for a new building permit in June 2008; the Appellant states that a 17-story building has been under DOB review since at least 2000 at which time DOB determined that the proposed height was consistent with ZR § 23-692 and eliminated an objection to the building's height; and

WHEREAS, under subsequent application, the project failed zoning review and received a notice of objections, which includes the following:

> street wall above the height of 100 feet (width of abutting street) does not contiguously abut and fully attached to existing street wall of highest adjacent building contrary to ZR 23-692. Portion of the building which does not comply with this provision, exceeds height limitation of ZR 23-692; and

WHEREAS, DOB subsequently provided a reconsideration on January 8, 2009 which reflects that it accepted the height of the proposed building, as before, because it matches the height of the adjacent building at 328 West 86th Street and thus complies with ZR § 23-692; and

WHEREAS, however, on May 7, 2009, DOB issued a notice of objections, which states that per the GML:

> The proposed height fails to comply with and is in excess of the use restrictions of Article 16 of the General Municipal Law, which restrictions have been confirmed by and are reflected in the final judgment and permanent injunction affirmed by NY Court of Appeals in 328 Owners Corp. v. 330 West Oaks Corp., and the City of New York, reported at 8 N.Y.3d 372 (2007). The proposed building meets the definition of high rise per Building Code because it has occupied floors located more than 75 feet (22 860 mm) above the lowest level of fire department vehicle access; and

WHEREAS, the May 7, 2009 objection is the basis for he Final Determination on appeal; and

WHEREAS, the Appellant asserts that DOB's determination is erroneous because (1) enforcement of the UDAA Act falls outside of DOB's authority under the City Charter and (2) nothing in the UDAA Act or in any administrative determination, court decision or legal instrument concerning the site imposes such a height limit; and

Relevant Provisions of the Deed and the General Municipal Law

WHEREAS, the pertinent provision of the Deed between the City and Oaks Corp. is as follows:

> WHEREAS, the project to be undertaken by Sponsor ('Project') consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by existing zoning…; and

WHEREAS, the source of the Deed language is within the GML's provisions setting forth the criteria for the accelerated UDAAP process; GML §§ 693 and 694, which state, in pertinent part:

> . . . if a proposed urban development action area project is to be developed on an eligible area and consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning, the governing body . . . may waive the area designation requirement. (GML § 693)
>
> Any approval of an urban development action area project shall be in conformance with the standards and procedures required for all land use determinations pursuant to general, special or local law or charter . . . (GML § 694(5)); and

The Appellant's Primary Arguments

A. Enforcement of the UDAA Act is Beyond DOB's Statutory Jurisdiction

WHEREAS, the Appellant, citing Abiele Contracting, Inc. v. New York City School Construction Authority, 91 N.Y.2d 1, 10 (1997); Finer Lakes Racing Ass'n. Inc. v. New York State Racing and Wagering Board, 45 N.Y.2d 471, 480, asserts that an administrative agency can only act within the scope of the authority granted it by statute and that a determination made in excess of that authority is unlawful and void; and

WHEREAS, the Appellant cites to City Charter § 643 for the function of DOB; City Charter § 643, states, in pertinent part:

> The department shall enforce, with respect to buildings and structures, such provisions of the building code, zoning resolution, Multiple dwelling law, labor law and other laws, rules and regulations as may govern construction, alteration, maintenance, use occupancy, safety, sanitary conditions, mechanical equipment and inspection of buildings or structures of the city; and

WHEREAS, the Appellant cites to City Charter § 645, which provides that the Commissioner of Buildings is empowered:

> (1) to examine and approve or disapprove plans for the construction or alteration of any building or structure…(2) to require that the construction or alteration of any building or structure, including the installation or alteration or any service equipment therein, shall be in accordance with the provisions of law and the rules, regulations and orders applicable thereto…(3) to issue certificates of occupancy for any building or structure situated in the city; and

WHEREAS, the Appellant asserts that DOB's review, pursuant to the Charter, is limited to the enforcement of technical standards found in the Building Code, the Zoning Resolution, and the Multiple Dwelling Law; and

WHEREAS, the Appellant relies on Matter of Tafnet Realty Corp. v. New York City Dep't. of Buildings, 116 Misc.2d 609 (Sup. Ct. NY Co. 1982), which involved DOB's issuance of housing violations against a hotel, for matters including rent control regulations and tenant harassment; and

WHEREAS, the Tafnet court held that:

> the duties of the Buildings Commissioner, as set forth in the city charter, deal 'exclusively' with structural and technical matters: the enforcement of the Building Code, the inspection of premises and the review of plans and issuance of permits. . . General living conditions are not within [the Commissioner's] jurisdiction; neither are violations of other laws, civil, or criminal, which may occur within buildings or structures; and

WHEREAS, the Appellant asserts that the UDAA Act does not establish technical standards and specific regulations applicable to the construction, alteration or use of buildings but, rather, addresses community preservation and redevelopment goals; and

WHEREAS, the Appellant asserts that the UDAAP program is administered by HPD and DOB does not have a specific role in its implementation; and

WHEREAS, the Appellant asserts that GML § 692 and City Charter § 1802(3) grant HPD the authority for implementation and oversight of UDAAP projects and further that HPD has its own set of regulations which describe procedure and restrictions with more specificity; and

WHEREAS, the Appellant asserts that the primary mechanism for ensuring compliance with the restrictions of a particular UDAAP project are set forth in a deed or lease or other instrument associated with the City's conveyance of the property; and

WHEREAS, the Appellant asserts that HPD has the enforcement authority and it may enforce the restrictions through its own process or in collaboration with the New York City Law Department; and

WHEREAS, the Appellant asserts that in the absence of express authority to DOB for the enforcement of UDAAP-related interests, HPD maintains the appropriate authority; and

WHEREAS, the Appellant distinguishes the Building Code, Zoning Resolution and Multiple Dwelling Law from the UDAA Act, asserting that the latter does not establish technical standards and specific regulations applicable to construction, alteration or use of buildings but which is designed for public policy initiatives; and

WHEREAS, the Appellant likens UDAAP to the Urban Renewal program; the Appellant cites to a letter from DOB in response to an inquiry about the enforcement of Urban Renewal provisions and DOB stated that it did not interpret or enforce the noted contract terms and referred the inquiry to HPD; and

WHEREAS, DOB disagrees with the Appellant and states that its Charter authority encompasses the UDAA Act for purposes of determining whether a new building application conforms with legal requirements; and

WHEREAS, DOB asserts that the enforcement of the UDAA Act, pertaining to new construction on accelerated UDAAP sites, such as the subject site, is within its jurisdiction; and

WHEREAS, DOB cites to its broad authority as set forth in City Charter §§ 643 and 645, noted above; and

WHEREAS, DOB asserts that nothing in the express language of the Charter prohibits it from considering the provisions of the UDAA Act in connection with new building

applications; and

WHEREAS, DOB states that HPD does not have a statutory role in the disposition of a new building application or in the enforcement of the UDAA Act's provisions pertaining to new construction; and

WHEREAS, DOB states that the Law Department has advised that under the UDAA Act, HPD's role in accelerated UDAAPs consists of selecting City-owned properties for disposition pursuant to the statute, selecting grantees, negotiating terms, obtaining necessary public approvals, drafting the deed and conducting the closings; and

WHEREAS, accordingly, DOB has determined that HPD's role ends after the disposition and that DOB has the authority to enforce provisions of law, but not the Deed, which remains subject to HPD; and

WHEREAS, DOB states that, in the subject case, it is not enforcing the Deed, but rather the law; and

WHEREAS, DOB states that the UDAA Act sets forth specific limitations as to what may or may not lawfully be constructed upon the site and, thus, the provisions fall within its purview; and

WHEREAS, DOB states that the UDAA Act is silent as to the authority to enforce construction limitations (as opposed to Deed restrictions) and, thus, it is appropriately within DOB's authority since it is charged with enforcing construction laws, regulations and rules upon buildings and structures within New York City; and

WHEREAS, DOB distinguishes UDAA Act enforcement responsibilities, which it assumes because it finds that no other agency is identified as enforcing it, from the provisions at issue in Tafnet, where the Court identified the operative agencies who had enforcement powers, rather than DOB; and

WHEREAS, DOB asserts that in the absence of express authority, it may invoke broad Charter authority because no other agency has broad authority to enforce construction-related regulation; and

WHEREAS, HPD agrees with DOB that DOB has jurisdiction to enforce the UDAA Act; and

WHEREAS, HPD submits that DOB exercises jurisdiction from a practical standpoint because only DOB reviews a proposal at its inception and could stop a project before construction begins; and

WHEREAS, HPD asserts that its process of enforcement would be less efficient than that exercised by DOB because it could not raise a claim that a deed was violated until after the property owner demolished the building and construction on a new one began; and

WHEREAS, the Board notes, that although the parties disagree as to whether HPD or DOB has the authority to enforce the UDAA Act, the parties agree that the enforcement of the Deed is properly within the jurisdiction of HPD as grantor; and

WHEREAS, the Board notes that the true conflict is not over the jurisdiction but that the crux of the subject appeal concerns the discrete issue of whether, pursuant to the UDAA Act, there is a height limitation (other than by zoning) for a building on a site subject to an accelerated UDAAP; and

WHEREAS, accordingly, although all parties – the Appellant, DOB, and HPD - agree that HPD has jurisdiction over the Deed, the question remains as to which agency maintains jurisdiction to enforce the UDAA Act from which the Deed arises; and

WHEREAS, the Board agrees that DOB has broad powers under the Charter to review and enforce construction-related regulations; and

WHEREAS, the Board appreciates that in certain instances DOB has express authority and, in other instances, it derives its authority from a more general understanding of the Charter powers and a recognition of DOB's unique position as the reviewer of building plans and issuer of building permits; and

WHEREAS, the Board finds that there are instances when DOB invokes its express authority to enforce statutes and there are instances when DOB is restricted from enforcing certain statutes (such as particular provisions of the Housing Maintenance Code and the Multiple Dwelling Law); and

WHEREAS, the Board notes that there may be other instances where it is appropriate to identify concurrent authority between DOB and another agency; and

WHEREAS, the Board notes that concurrent authority may manifest as multiple agencies whose approval is required for a single application review different elements of the same application; this includes instances when, in the process of reviewing plans, DOB may be alerted to another agency's jurisdiction, as it is with landmarks, wetland, and flood hazard regulations and thus a form of concurrent jurisdiction is evident; and

WHEREAS, the Board notes that DOB provided examples of concurrent jurisdiction with other agencies, but the Board distinguishes those examples from the subject of the appeal because the proffered agencies maintain a separate review process and enforcement practice; and

WHEREAS, the Board agrees with DOB that it exercises a range of so-called enforcement practices from direct to indirect, when otherwise not restricted from enforcement, and that a broad reading of the Charter authority suggests that the elements of the UDAA Act could fit within DOB's enforcement powers; and

WHEREAS, however, the Board respectfully disagrees that the subject criteria DOB seeks to enforce is within its exclusive authority; and

WHEREAS, the Board's conclusion arises from the following: (1) the UDAA Act is a statute related to process rather than the Building Code or other body of technical regulations, (2) unlike in the concurrent jurisdiction examples, DOB would generally not be aware that a project was subject to UDAAP because that is not one of the myriad criteria identified in DOB applications, and (3) it is not clear that DOB consistently reviews and enforces UDAA Act-related criteria in its review process; and

WHEREAS, as to HPD's assertions about procedural efficiency, the Board disagrees that DOB should have the enforcement power because it is in a better position than HPD to monitor compliance because, as noted, DOB may not be

aware of UDAAP status in the course of its ordinary plan review and the Board finds that HPD would have the ability to oppose a project that does not comport with its Deeds prior to the completion of demolition and commencement of new construction; and

WHEREAS, however, the Board finds that the Appellant overstates the limits imposed on DOB's authority by Tafnet and finds that building height and number of dwelling units can readily be viewed as technical standards, reflected on building plans and within DOB's Charter powers, which can be distinguished from social and building management issues identified in Tafnet; and

WHEREAS, accordingly, the Board's determination is limited to the subject appeal and it finds that there may be UDAA Act, or related provisions that are within DOB's purview pursuant to its Charter power; the extent of DOB's authority need not be answered within this appeal since the underlying question is limited to whether the Appellant may proceed with the proposed plans to construct a building that exceeds the Building Code definition of low-rise; and

WHEREAS, further, the Board accepts that DOB has broad authority and that it may identify matters during its plan review, which are not generally before it and additionally the Board finds it reasonable for DOB to alert another agency when it identifies a non-complying condition, pursuant to a construction-related or other regulation; and

B. There is Not Any Basis for Height Restrictions on the Proposed Building

WHEREAS, the Appellant asserts that even if the UDAA Act were within DOB's jurisdiction, there is no basis for the requirement that a new building be low-rise as defined by the Building Code; and

WHEREAS, the Appellant asserts that the UDAA Act provides procedural guidelines as to when the accelerated UDAAP is permitted, including instances where the project "consists solely of the rehabilitation or conservation of existing private or multiple dwellings or the construction of one to four unit dwellings without any change in land use permitted by local zoning . . . " See GML §§ 693, 694(5) and 695(6)(d); and

WHEREAS, the Appellant asserts that the UDAA Act's only reference to low-rise structures is found in GML § 694(1), which states that "the agency shall prepare or cause to be prepared, with provisions which, where appropriate, are expressly designed to encourage and stimulate businesses experienced in the development of one to four family low-rise residential structures or minority owned enterprises . . ."; and

WHEREAS, the Appellant finds that the noted provision is to be read broadly and is far from establishing a low-rise mandate for all UDAAP projects; and

WHEREAS, the Appellant asserts that the language of the statute is clear and unambiguous and thus should be construed so as to give effect to its plain meaning and that the only restriction to projects within the accelerated UDAAP program are that it be limited to "the construction of one to four unit dwellings . . . without any change in land use permitted by local zoning . . ."; and

WHEREAS, the Appellant states, similarly, that the Mayor's and City Council's resolutions associated with the UDAA Act and land disposition nor the Deed which effectuated the conveyance to Oaks Corp. contain any provision that limits new construction to a low-rise building or imposes any other building height limit; and

WHEREAS, the Appellant states that GML § 695(5) provides that any deed conveying UDAAP project property to a private entity shall contain the provisions describing and restricting the use of the property; the pertinent language about the building structure is on the first page of the Deed, as noted above; and

WHEREAS, specifically, DOB asserts that the legislative history and judicial interpretation of the UDAA Act establish bright-line, nondiscretionary requirements that new buildings subject to the UDAA Act must consist solely of one to four-unit dwellings, and that such must be low-rise; and

WHEREAS, accordingly, DOB maintains its position that the proposal does not comport with relevant provisions of the UDAA Act because the proposed 17-story building is not low-rise, as defined at Building Code § 403.1; and

WHEREAS, DOB interprets there to be a restriction to one to four-unit low-rise buildings based on the (1) identification of such language in the legislative history and (2) its interpretation of New York City Coalition for the Preservation of Gardens v. Giuliani, 175 Misc. 2d 644 (Sup. Ct. N.Y. Co., 1997), an Article 78 proceeding that challenged a plan to replace community gardens on City-owned lands with new development through the accelerated UDAAP mechanism; and

WHEREAS, although DOB states that there are bright-line requirements, it looks to the legislative history of the UDAA Act, which mentions the construction of "one and two family low rise residential structures" as part of the legislative purpose of fostering development or redevelopment; the specified dwelling type was expanded to include one to four family low-rise residential development; and

WHEREAS, DOB cites to the Court's decision in Gardens, stating that the Court found the purpose of the UDAA Act was "to facilitate the rehabilitation of salvageable existing private or multiple dwellings and the replacement, in kind, of structures that were lost, abandoned or destroyed . . . [or] to facilitate replacement of housing on an as is basis . . . so as to restore a neighborhood. . .to its original character." 175 Misc. 2d at 659-661; and

WHEREAS, DOB further cites the Court in Gardens for noting that the legislative history of the UDAA Act and the phrase "consists solely of the rehabilitation or conservation of existing private or multiple dwelling or the construction of one to four-unit dwellings" "strongly suggests that the phrase was meant to assure that waivers of review of speedy development without land use scrutiny would be confined to 'as-is' construction and would not exempt high-rise buildings . . ." Id., at 661; and

WHEREAS, DOB asserts that the proposed building, which is neither low-rise, per the Building Code, nor in-kind replacement of the existing five-story building creates non-compliance with the Building Code's definition of low-rise and the building plans cannot be approved; and

WHEREAS, DOB states that a height limitation was not

in the Deed because it was HPD's intent that the building would be conserved and not reconstructed; and

WHEREAS, HPD concurs with DOB that the text, legislative history, and judicial interpretation of the UDAA Act establish clear, nondiscretionary requirements that new buildings on subject sites are limited to one to four-unit dwellings that are low-rise; and

WHEREAS, the Board has reviewed the arguments from (1) the Appellant that the UDAA Act language is unambiguous and from (2) DOB and HPD that the legislative history and case law inform the UDAA Act to require a height limitation of 75 feet on the subject UDAAP site; and

WHEREAS, the Board agrees with the Appellant that the language of the UDAA Act, as incorporated into the Deed, is unambiguous and does not set forth a prohibition on constructing a 17-story building with four residential units; and

WHEREAS, specifically, the Board finds that the UDAA Act language relevant to the accelerated UDAAP process associated with the subject site is clear and does not state any height limitation, as found in the Building Code, or otherwise; and

WHEREAS, because the language is clear and unambiguous, the Board does not find it necessary to examine the legislative history or case law, but it has considered DOB's references in support of its argument to analyze the intent of the text; and

WHEREAS, as to intent, the Board finds that neither the legislative history nor case law reaches DOB's conclusion that the Building Code definition of "low-rise" should be read into the statute to limit the height of the proposed building to 75 feet; and

WHEREAS, the Board finds the noted references to "low-rise" (1) fail to establish a nexus to the Building Code definition and (2) fail to establish a bright-line nondiscretionary requirement to impose a height limitation of 75 feet, pursuant to an imported Building Code definition; and

WHEREAS, the Board agrees with DOB that the Gardens court limits the bulk of the construction in that case, but also notes that the facts are not on point with the subject case nor does the Court set forth a requirement that construction on sites subject to an accelerated UDAAP be limited to a height of 75 feet; and

WHEREAS, specifically, the primary context of the Gardens case was to determine whether SEQRA review could be waived for a proposed 98-unit project; and

WHEREAS, in its discussion of the waiver for an accelerated UDAAP, which was also sought and granted, the Court discussed a purpose of the UDAAP initiative as:

> to facilitate the rehabilitation of salvageable existing private or multiple dwellings and the replacement, in kind, of structures that were lost, abandoned or destroyed. The history and purpose of the law suggests, then, that this section was meant to facilitate replacement of housing on an as-is basis and in accordance with existing zoning regulations so as to restore a neighborhood as quickly and economically as possible to its original character. Id., at 661; and

WHEREAS, the Court also states:

> the Legislature's declared purpose was to provide incentives for the proper redevelopment of such areas, to enlist participation by established entrepreneurs experienced in the development of low-rise residential structures meant to replace those generally found in such urban areas, and to stimulate private investment and redevelopment to prevent the spread of slums and blight. Id., at 660; and

WHEREAS, the Board notes that the Court recognizes that the anticipated nature of construction was in-kind replacement or that which may be performed by experienced low-rise developers; and

WHEREAS, however, the Board notes that a reference to in-kind replacement and its performance by those with experience in low-rise construction does not set forth a bright-line regulation as to height; and

WHEREAS, in fact, the Board notes that in-kind replacement does not necessarily exclude the construction of a building with a height greater than 75 feet; and

WHEREAS, the Board notes that the proposed building, which DOB specifically noted is aligned with adjacent buildings, is compatible with the neighborhood's character; this is another distinction from Gardens in which the purported absence of such contextual development was a primary concern; and

WHEREAS, the Board acknowledges that City Council, the Mayor, nor HPD may have contemplated that a four-unit building would reach the height of 170 feet or 17 stories, such as the proposed building, but, disagrees with DOB that there is a bright-line nondiscretionary requirement to restrict that height, pursuant to a definition found in a separate statute; and

WHEREAS, the Board appreciates that in 1999 the parties may not have even initially contemplated reconstruction, however, the language of the UDAA statute and the Deed, expressly provide for new construction, as the Court of Appeals affirmed in the 328 Owners Corp. decision; and

WHEREAS, the Board notes that the Court of Appeals in 328 Owners Corp. addressed the matter of intent, in its discussion of whether construction should be limited to conservation of the existing building, and that it ruled that, notwithstanding the original intent for the conservation of the existing building, the Deed does not limit the project to its conservation; and

WHEREAS, the Board notes that the Court did not rule on the subject of height limitations but, a determination that it not be limited to low-rise construction as may have been contemplated, supports the conclusion that the Court did not allow the known intent at the time of the conveyance to supersede the plain language of the Deed; and

WHEREAS, accordingly, the Board cannot conclude that new construction, as explicitly approved by the Court, should be limited to low-rise buildings, because of the City's unarticulated intent at the time of conveyance; and

WHEREAS, the Board finds that the omission of a height restriction, if one was intended, may be unfortunate but the plain language in the Deed, which does not contain such a

restriction, and is not imputed with clear direction from the legislative history or case law, should be upheld in the absence of the articulation of such intent; and

WHEREAS, the Board agrees with the Appellant that the UDAA Act lacks specificity and, notwithstanding the Appellant's purchase of the site while litigation was pending in the matter, a purchaser would not be on notice of any height restriction since such a restriction does not appear in the Deed or associated provisions of the statute; and

WHEREAS, the Board agrees with the Appellant that neither the legislative history nor the Gardens case clearly support a finding that all accelerated UDAAP projects must be limited to a height of 75 feet; and

WHEREAS, finally, the Board notes that the Appellant represents that there are not any outstanding objections related to the Building Code, the Zoning Resolution, or the Multiple Dwelling Law, and that the Appellant thus asserts that the residential building, does not result in any land use change and complies with all local zoning, as required by the UDAA Act and the Deed; and

Conclusion

WHEREAS, the Board has determined that the UDAA Act, as reflected in and implemented through the Deed, sets forth the restrictions for development of the subject site and, which does not include a height limitation; and

WHEREAS, accordingly, the Board concludes the height of the proposed building is not limited other than by zoning; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated July 13, 2009, determining that the building height is limited to low-rise construction, is hereby granted.

Adopted by the Board of Standards and Appeals, April 20, 2010.

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 – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 11, 2010, acting on Department of Buildings Application No. 420107299, reads in pertinent part:

"A1– The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law, Article 3, Section 35; and

A2– The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings policy and General City Law Article 3, Section 35;" and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in the *City Record*, and then to continued hearing on April 20, 2010 with closure and decision on the same date; and

WHEREAS, by letter dated February 15, 2010, the Fire Department states that it has no objection to the subject proposal, with the following conditions: (1) the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and (2) interconnected smoke alarms be installed in accordance with Building Code § 907.2.10; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the entire building will be fully sprinklered; and

WHEREAS, by letter dated February 12, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 30, 2010, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated January 11, 2010, acting on Department of Buildings Application No. 420107299, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 21, 2010"– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 20, 2010.

300-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for Dutch Kills Partners, LLC, owner.

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2 /R5B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125' northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Steven Harrison, Barbara Lorine, Vienna Ferreri, Geo. L. Stamatiades, Noni Pratt, Melinda Parino and Megan 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 May 25, 2010, at 10 A.M., for decision, hearing closed.

283-09-BZY thru 286-09-BZY

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Alco Builders, Inc., owners.

SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M. for continued hearing.

295-09-A & 296-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Karen Murphy, Trustee.

SUBJECT – Application October 20, 2009 – Proposed construction of one family home located within the bed of a mapped street (Bache Street, contrary to Section 35 of the General City Law. R3A Zoning District

PREMISES AFFECTED – 81 and 83 Cortlandt Street, south side of Cortlandt Street, bed of Bache street, Block 1039, Lot 25 & 26, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, APRIL 20, 2010
1:30 P.M.

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

ZONING CALENDAR

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: Adam Rothkrug.
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 Staten Island Borough Commissioner, dated September 17, 2009, acting on Department of Buildings Application No. 520015037, reads in pertinent part:

> "ZR 22-14. BSA approval required for proposed ambulatory diagnostic or treatment facility (Use Group 4), containing more than 1,500 sq. ft. of floor area, is contrary to the zoning resolution;" and

WHEREAS, this is an application under ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, the legalization of the use of a one-story and basement building as an ambulatory diagnostic/treatment health care facility (Use Group 4) with six parking spaces, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on February 2, 2010 after due notice by publication in *The City Record*, with continued hearings on February 23, 2010 and March 23, 2010, and then to decision on April 20, 2010; and

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

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of Richmond Avenue, between Petrus Avenue and Wilson Avenue, within an R3A zoning district; and

WHEREAS, the site has a lot area of 7,413 sq. ft. and is currently occupied by a Use Group 4 ambulatory diagnostic/treatment health care facility and a detached garage; and

WHEREAS, the facility occupies 2,568 sq. ft. of floor area (0.35 FAR) on the first floor and in the basement; and

WHEREAS, the Board notes that a 1,500 sq. ft. ambulatory diagnostic/treatment health care facility use would be permitted as-of-right in the subject zoning district; and

WHEREAS, the special permit pursuant to ZR § 73-125 allows for an increase in the floor area of an ambulatory diagnostic/treatment health care facility use up to a maximum of 10,000 sq. ft. on the site, provided that the amount of open area and its distribution on the zoning lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, the existing facility, with a floor area of 2,568 sq. ft., is within the floor area permitted by the special permit; and

WHEREAS, the existing building provides a lot coverage of 24 percent (55 percent is the maximum permitted); a front yard with a depth of 23'-0" (a front yard with a depth of 18'-0" is the minimum required); side yards with widths of 14'-0" and 15'-0", respectively (two side yards each with minimum widths of 10'-0" each are required); and a rear yard with a depth of 36'-0" (a rear yard with a depth of 30'-0" is required); and

WHEREAS, accordingly, the Board finds that the amount of open area and its distribution on the lot conform to standards appropriate to the character of the neighborhood; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the proposed ambulatory diagnostic/treatment health care facility complies with all other relevant zoning district regulations; and

WHEREAS, the applicant notes that the accessory parking for an ambulatory diagnostic/treatment health care facility of this size is six spaces (one space is required per 400 sq. ft. of floor area); and

WHEREAS, however, the applicant represents that the site qualifies for a waiver of the off-street parking requirements pursuant to ZR § 25-33 because fewer than ten parking spaces are required; and

WHEREAS, nonetheless, the applicant is providing six off-street parking spaces; and

WHEREAS, the applicant represents that the proposed facility is consistent with the neighborhood character which is characterized by a mix of residential uses and commercial office uses; and

WHEREAS, the applicant submitted a radius diagram indicating that commercial uses are located directly adjacent to the north and south and directly fronting on the subject

site, including a chiropractor's office directly to the south and a three-story dental office directly across Richmond Avenue; and

WHEREAS, the plans indicate that the applicant is providing additional landscaping along the site's frontages on Richmond Avenue; and

WHEREAS, at hearing, the Board directed the applicant to comply with signage regulations related to community facilities; and

WHEREAS, in response, the applicant submitted a sign location plan and photographs reflecting that the excess signage has been removed from the site; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-03 and 73-125.

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 each and every one of the required findings under ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, the legalization of a one-story and basement ambulatory diagnostic/treatment health care facility (Use Group 4), contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 24, 2009" – six (6) sheets and "Received March 26, 2010" – one (1) sheet; and *on further condition*:

THAT the parameters of the building shall be as follows: 2,568 sq. ft. of floor area and six parking spaces, as shown on the BSA-approved plans;

THAT there shall be no change in the use of the building as an ambulatory diagnostic/treatment health care facility (Use Group 4) without prior application to and approval from the Board;

THAT landscaping shall be provided and maintained, as shown on the BSA-approved plans;

THAT signage shall be maintained in accordance with the BSA-approved plans;

THAT the hours of operation for the ambulatory diagnostic/treatment health care facility shall be: Monday through Friday, from 9:00 a.m. to 5:00 p.m.; Saturday, from 9:00 a.m. to 1:00 p.m.; and closed on Sunday;

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

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

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

Adopted by the Board of Standards and Appeals, April 20, 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.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for deferred decision.

239-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.

SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a community youth center (UG 4) in the cellar and first floor in a proposed three-story and penthouse mixed-use building, contrary to side yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Adam Rothkrug.

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

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for adjourned 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.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

214-09-BZ
APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.
SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.
PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.
COMMUNITY BOARD #11BX
APPEARANCES –
For Applicant: Adam W. Rothkrug and Hiram A. Rothkrug.
For Opposition: Senator Jeff Klein and Bret Collazzi for Council Member Vacca

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

254-09-BZ thru 256-09-BZ
APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.
SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.
PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 8, 2010 at 1:30 P.M., for adjourned hearing.

271-09-BZ
APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.
SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.
PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 25, 2010, at 1:30 P.M., for continued hearing.

273-09-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.
SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.
PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.
COMMUNITY BOARD #10Q
APPEARANCES –
For Applicant: Adam Rothkrug.
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 May 18, 2010, at 1:30 P.M., for decision, hearing closed.

308-09-BZ
APPLICANT – Jorge F. Canepa, for Joseph Ursini, owner.
SUBJECT – Application November 20, 2009 – Variance (§72-21) to legalize a swimming pool located partially within a front yard and to allow two parking spaces to be located between the street line and the building street wall, contrary to §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

APPEARANCES –
For Applicant: Jorge Canepa.
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 May 11, 2010, at 1:30 P.M., for decision, hearing closed.

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
APPEARANCES –
For Applicant: Neil Weisbard and Kyu Lee.
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 May 25, 2010, at 1:30 P.M., for decision, hearing closed.

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 #2BX
APPEARANCES –
For Applicant: Calvin Wong and Steven M. Sinacori.

ACTION OF THE BOARD – Laid over to May 11, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.