BULLETIN

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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*
DARA OTTLEY-BROWN
SUSAN M. HINKSON
EILEEN MONTANEZ
Commissioners

Jeffrey Mulligan, *Executive Director*
Becca Kelly, *Counsel*

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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CALENDAR

AUGUST 24, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 24, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

752-29-BZ
APPLICANT – Jack Gamill, P.E. for Marial Associates of New Jersey, L.P., owner; Bay Ridge Honda, lessee.
SUBJECT – Application May 21, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of Automotive Repair and Dealership (Honda) which expired on April 22, 2010. C4-2 zoning district.
PREMISES AFFECTED – 8801-8809 4th Avenue, Block 6065, Lot 6. Borough of Brooklyn.
COMMUNITY BOARD #6BK

214-00-BZ
APPLICANT – Harold Weinberg, for Caliv LLC, owner.
SUBJECT – Application October 10, 2008 – Application requesting an Extension of Time to Obtain a Certificate of Occupancy of a previously granted Special Permit (§73-242) allowing an Eating and Drinking Establishment within a C3 zoning district. The application seeks a waiver of the Board's Rules of Practice and Procedure because the time to obtain the Certificate of Occupancy expired on April 10, 2008; an Extension of Term which expired on March 26, 2010 and an amendment to the site plan.
PREMISES AFFECTED – 2777 Plumb 2nd Street, northeast corner of Harkness Avenue, Block 8841, Lot 500, Borough of Brooklyn.
COMMUNITY BOARD #15BK

124-05-BZ
APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.
SUBJECT – Application June 15, 2010 –Amendment to a previously granted Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.
PREMISES AFFECTED – 382 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, Borough of Manhattan.
COMMUNITY BOARD #2M

APPEALS CALENDAR

120-10-A
APPLICANT – Gary D. Lenhart, RA, for The Breezy Point Cooperative, Inc., owner; Kevin Kennedy, lessee.
SUBJECT – Application June 30, 2010 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street, contrary to General City Law Section 36 and the upgrade of an existing non complying private disposal system contrary to Department of Buildings policy. R4 zoning district.
PREMISES AFFECTED – 5 Devon Walk, east side of Devon Walk 21.06' south of mapped Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

AUGUST 24, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 24, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

129-07-BZ
APPLICANT – Gerald J. Caliendo, R.A., for Angel Gerasimou, owner.
SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. M1-4 zoning district.
PREMISES AFFECTED – 1101 Irving Avenue, corner fromed by the north side of Irving Avenue and Decatur Street, Block 3542, Lot 12, Borough of Queens.
COMMUNITY BOARD #5Q

130-07-BZ thru 134-07-BZ
APPLICANT – Gerald J. Caliendo, P.A., Angelo Gerasimou, owner.
SUBJECT – Application May 21, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to ZR §42-00. M1-4 zoning district.
PREMISES AFFECTED – 1501, 1503, 1505, 1507 Cooper Avenue, corner formed by west side of Cooper Avenue and Irving Avenue, Block 3542, Lots 1, 95, 94, 93, 92, Borough of Queens.
COMMUNITY BOARD #5Q

35-10-BZ
APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.
SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue. The proposal is contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.
PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.
COMMUNITY BOARD #8Q

47-10-BZ
APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.
SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow for a manufacturing use in a residential district, contrary to ZR §22-00. M1-1/R3-2 zoning district.
PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.
COMMUNITY BOARD #9BX

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, AUGUST 3, 2010
10:00 A.M.

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

SPECIAL ORDER CALENDAR

159-99-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Congregation Beis Meir, Incorporation, owner.
SUBJECT – Application March 25, 2010 – Amendment to legalize modification to a previously granted Variance (§72-21) of a one-story UG4 Synagogue and Yeshiva (*Congregation Beis Meir*). M2-1 zoning district.
PREMISES AFFECTED – 1347-1357 38th Street, north side of 38th Street, between 13th Avenue and 14th Avenue, Block 5300, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Fredrick A Becker.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in an M2-1 zoning district, the conversion of an existing one-story building to a school (Use Group 3), which did not conform with the underlying use regulations, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, and then to decision on August 3, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, this application was brought on behalf of Congregation Beis Meir, a not-for-profit religious institution; and

WHEREAS, the subject site is located on the north side of 38th Street between 13th Avenue and 14th Avenue, within a M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 2000 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M2-1 zoning district, the conversion of a one-story building to a school, as part of the Beis Meir Synagogue and Yeshiva, which did not conform with the underlying district use regulations, contrary to ZR § 42-00; and

WHEREAS, most recently, on June 27, 2001, the Board amended the grant to permit the addition of two mezzanines to the main sanctuary on the site; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize additional changes to the building that are contrary to the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to legalize an increase in the floor area from 31,865 sq. ft. (1.45 FAR) to 33,567 sq. ft. (1.53 FAR); and

WHEREAS, the Board notes that the maximum FAR permitted for community facility uses in the subject M2-1 zoning district is 2.0; and

WHEREAS, the applicant states that the increase in floor area was necessary to provide an intermediate level between the first floor and second floor mezzanine at the southwest corner of the property and to provide an addition to the second floor; and

WHEREAS, the applicant also seeks to legalize a decrease in the height of the front roof from 20'-0" to 17'-9", an increase in the height of the building at the southwest corner of the property to accommodate the new intermediate level, and modifications to the interior layout and the location and size of windows and doors; and

WHEREAS, the applicant states that the increase in height at the southwest corner of the site matches the height at the rear of the building, which remains unchanged, and is appropriate within the context of the surrounding area, given the adjacent two-story building immediately to the west of the site and the adjacent four-story building immediately to the east of the site; and

WHEREAS, the applicant states that the proposed changes are necessary to make the building more efficient and to better meet the school's programmatic needs by providing additional bathrooms, offices and a utility room; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 19, 2000, so that as amended this portion of the resolution shall read: "to permit the noted modification to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received July 19, 2010"-(9) sheets; and *on further condition*:

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) and/or configuration(s) not related to the relief granted."
(DOB Application No. 300798448)

Adopted by the Board of Standards and Appeals, August 3, 2010.

589-31-BZ
APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.
SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.
PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.
COMMUNITY BOARD #12Q
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 August 24, 2010, at 10 A.M., for decision, hearing closed.

736-45-BZ
APPLICANT – Walter T. Gorman, P.E., for Mildel Property Associates, LLC, owner; ExxonMobil Corporation, lessee.
SUBJECT – Application May 6, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Mobil*) which expires on March 17, 2011. C2-4/R8 zoning district.
PREMISES AFFECTED – 3740 Broadway, north east corner of West 155th Street, Block 2114, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #12M
APPEARANCES –
For Applicant: Cindy Bachan.
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 August 24, 2010, at 10 A.M., for decision, hearing closed.

1715-61-BZ
APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.
SUBJECT – Application June 22, 2010 – Extension of Time to Obtain a Certificate of Occupancy of a UG6A dry cleaning establishment (*21st Century Cleaners*) which expired on June 8, 2010. R3X zoning district.
PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Mitchell Ross.
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 September 14, 2010, at 10 A.M., for decision, hearing closed.

60-90-BZ
APPLICANT – EPDSCO, Incorporated for Nissim Kalev, owner.
SUBJECT – Application May 18, 2010 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.
PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

139-92-BZ
APPLICANT – Samuel H. Valencia, for Samuel H. Valencia-Valencia Enterprises, owners.
SUBJECT – Application April 23, 2010 – Extension of Term for a previously granted Special Permit (§73-244) for the continued operation of a UG12 Eating and Drinking Establishment with Dancing (*Deseos*) which expired on March 7, 2010; Waiver of the Rules. C2-2/R6 zoning district.
PREMISES AFFECTED – 52-15 Roosevelt Avenue, north side 125.53' east of 52nd Street, Block 1316, Lot 76, Borough of Queens.
COMMUNITY BOARD #2Q
APPEARANCES –
For Applicant: Samuel H. Valencia and Alejandro Valencia.
For Administrative: Anthony Scaduto, Fire Department.
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 August 17, 2010, at 10 A.M., for decision, hearing closed.

44-97-BZ & 174-00-BZ
APPLICANT – Stuart A. Klein, Esq., for SDS Leonard, LLC, owner; Millennium Sports, LLC, lessee.
SUBJECT – Applications March 30, 2010 and March 18, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment which expired on October 28, 2007; Amendment of plans in sub-cellar; Waiver of the Rules. C6-2A zoning district.
PREMISES AFFECTED – 78-80 Leonard Street & 79 Worth Street, between Broadway and Church Street, Block 173, Lot 4, 19, 20, Borough of Manhattan.
COMMUNITY BOARD #1M
For Applicant: Abigail Patterson.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for decision, hearing closed.

98-97-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for 278 Eighth Associates, owner; TSI West 23 LLC d/b/a New York Sports Club, lessee.
SUBJECT – Application May 19, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2006; Amendment to change the hours of operations; Waiver of the Rules. C2-7A zoning district.
PREMISES AFFECTED – 270 Eighth Avenue, northeast corner of Eighth Avenue and West 23rd Street, Block 775, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M
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 September 14, 2010, at 10 A.M., for decision, hearing closed.

44-99-BZ
APPLICANT – Phillip L. Rampulla, for Michael Bottalico, owner.
SUBJECT – Application April 21, 2010 – Extension of Term for the continued use of an Automotive Repair Shop (UG16) which expired on February 1, 2010; Waiver of the Rules. R3A zoning district.
PREMISES AFFECTED – 194 Brighton Avenue, south side of Brighton Avenue, west of Summer Place, Block 117, Lot 20, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Philip L. Rampulla.
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 August 24, 2010, at 10 A.M., for decision, hearing closed.

164-04-BZ
APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.
SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted physical culture establishment (*Planet Fitness*) which expired on February 7, 2007; Amendment to change operator, hours of operation and interior modification; Waiver of the Rules. C2-1/R6 zoning district.
PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.
COMMUNITY BOARD #10BX
APPEARANCES –
For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

217-09-A
APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.
SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.
PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.
COMMUNITY BOARD #3M
APPEARANCES –
For Applicant: Ian Rasmussen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson…..4

Negative: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 6, 2009, acting on Department of Buildings Application No. 104744877 reads, in pertinent part:

MDL Objections

1. Increase in bulk/height is not permitted for 5-story building. *(MDL 211, MDL 4.35(a)(d), MDL 4.36)*
2. Any building, which exceeds 6 'stories' or sixty feet in height, shall be equipped with one or more passenger elevators. *(MDL 51.6, MDL 4.36)*
3. A public corridor with FPSC doors is required to separate egress stair from the residential unit(s). *(MDL 102.i, MDL 103.5, MDL 129.2, MDL 144.3, MDL 146, MDL 149)*
4. A 3-hour FR enclosure is required for stair. Stair shown is not fully enclosed and is open to a shared egress corridor with community facility. Every stair must be completely separated and have a fire separation from the public hall. *(MDL 148.3)*
5. Structural support for stair must be non-combustible in a 3-hour fire rated enclosure. *(MDL 148.3, MDL 4.25)*
6. Any building that is six stories or less may be of non-fireproof construction. Proposed penthouse addition exceeds six "stories" enlargement is not permitted. *(MDL 141, MDL 4.36)*
7. Entrance hall must be 3-hour non-combustible (not wood) enclosure (walls, floor & ceiling). *(MDL 149.2, MDL 4.25)*
8. All floors: stairs must be 3'-0" wide minimum and landings must be 3'-6" minimum. *(MDL 148.2)*
9. Fire escape terminating at rear yard must have access to street through a Fireproof passage. MD that is New Law Tenement for multiple dwelling erected after 4/18/1929 requires access directly to street (proposed passage is not considered fireproof because it is open to stair). *(MDL 231, MDL 53.2.b)*
10. Proposed Penthouse addition exceeds 33% of roof and must be counted as a 7th floor. Bulkhead and stairs must be included in floor area calculations. Memo 4.26.72, Memo 9.29.80, C26-406.2, ZR15-00, ZR 43-00, ZR 111-00. *(MDL 36)*; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary the noted sections of the MDL to allow for the legalization of an enlargement to two adjacent formerly five-story residential buildings (the "Buildings") within an R7B zoning district, contrary to MDL regulations; and

WHEREAS, the subject site is occupied by two adjacent seven-story (including penthouses) tenement buildings located on the south side of East 6th Street, between Avenue A and Avenue B which were constructed before 1901 (prior to a November 19, 2008 rezoning, the site was within an R7-2 zoning district); and

WHEREAS, the property owner (the "Appellant") constructed a sixth floor and a partial seventh floor, which resulted in MDL non-compliance, in 2007; an earlier iteration of the proposal sought the legalization of the sixth and seventh floors; and

WHEREAS, at the Board's direction, the Appellant eliminated the seventh floor from the plans and proposes now to legalize only the sixth floor; and

WHEREAS, after due notice by publication in *The City Record*, a public hearing was held on this application on September 22, 2009, with continued hearings on November 17, 2009, December 5, 2009, February 9, 2010, May 25, 2010 and July 27, 2010, and then to decision on August 3, 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, a tenant of the Buildings, represented by the Urban Justice Center (the "Opposition"), provided written and oral testimony in opposition to the application, citing the following primary concerns: (1) the Board should review the application pursuant to the requirements of MDL § 310(2)(c), rather than MDL § 310(2)(a) and the Board does not have the ability to vary all of the noted MDL provisions within the context of MDL § 310(2)(c); (2) the required finding of unnecessary hardship was self-created due to the Appellant's choice to enlarge the Buildings and thus was avoidable; (3) the Buildings are not unique, as required by MDL § 310(2)(c); (4) the Buildings do not comply with the current zoning requirements, including maximum FAR; (5) any claim of good faith reliance fails because ongoing litigation provided indication that the approval was being contested; (6) the proposed fire safety measures do not provide equivalent safety to that which would be provided by full compliance with the MDL; (7) the hardship costs are not substantiated and the Buildings should be viewed as one building, rather than two, so that the Appellant does not rely on duplicative costs; and (8) the Board should consider each provision of the MDL associated with the objections, rather than MDL § 211 alone; and

WHEREAS, New York State Assemblyman/Speaker Sheldon Silver, Assemblyman James Brennan, and State Senator Thomas K. Duane provided testimony in opposition to the application citing concerns about fire safety, whether the Appellant established a hardship, and whether the enlarged Buildings are compatible with neighborhood character, in light of the 2008 rezoning; and

WHEREAS, City Council Member Rosie Mendez provided testimony in opposition to the application, citing

concerns about fire safety and the absence of an elevator, and zoning bulk and use non-compliance; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application, citing concerns about neighborhood character, fire safety not achieving the equivalent of the MDL, the failure to establish that it would be too expensive to fully comply with the MDL; and zoning non-compliance; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided written testimony in opposition to the application citing concerns about neighborhood character and zoning non-compliance; and

WHEREAS, the Good Old Lower East Side Inc. and the Tenants Association of 515 East 5th Street provided testimony in opposition to the application; and

Procedural History

WHEREAS, on October 3, 2007, DOB issued Alteration Permit No. 104744877 for the two-story vertical enlargement of the Buildings; and

WHEREAS, subsequently, a tenant of the Buildings filed an appeal to the Board of DOB's approval of the project on the basis that DOB did not have the jurisdiction to modify MDL requirements; and

WHEREAS, on November 22, 2008, under BSA Cal. Nos. 81-08-A, the Board concurred with the tenant and granted the appeal; and

WHEREAS, the Appellant (in the subject case) filed an Article 78 proceeding to challenge the Board's decision and the court directed the Appellant to first exhaust its administrative remedies by appealing DOB's objections to the Board pursuant to its authority to modify the MDL; and

WHEREAS, accordingly, the Appellant now requests that the Board vary the specified provisions of the MDL so that it may proceed with construction and complete the Buildings; and

WHEREAS, the Appellant makes the following primary arguments: (1) although it maintains that DOB has the authority to vary the MDL as requested, it finds that the Board has the authority to vary the requirements pursuant to MDL § 310(2)(a) and the Board should review the request under that section; (2) the Board should not consider the individual sections of the MDL, as noted in the objections, but should consider them all within the context of MDL § 211 – Height and Bulk, which is the source of all of all of the non-compliance; (3) strict compliance with the MDL would give rise to practical difficulty and unnecessary hardship, the required findings of MDL § 310(2); (4) the proposed alternative improvements, including sprinklering the entire building, serve to maintain the spirit of the law, preserve public health, safety, and welfare and provide for substantial justice, as required by MDL § 310(2); and (5) the construction was performed in good faith reliance on DOB approvals; and

The Board's Authority under MDL § 310(2)

WHEREAS, the Appellant seeks to have the Board modify the current objections issued by DOB by applying MDL § 310(2)(a), rather than MDL § 310(2)(c), in its analysis of the request to vary the noted MDL non-compliance; and

WHEREAS, MDL § 310 – Board of appeals - provides, in pertinent part:

> 2. Where the compliance with the strict letter of this chapter causes any practical difficulties or any unnecessary hardships the board shall have the power, on satisfactory proof at a public hearing, provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done, to vary or modify any provision or requirement of this chapter, or of any rule, regulation, supplementary regulation, ruling or order of the department with respect to the provisions of this chapter, as follows:
>
> a. For multiple dwellings and buildings existing on July first, nineteen hundred forty-eight . . . and for multiple dwellings and buildings existing on November first, nineteen hundred forty-nine . . . provisions relating to:
>
> (1) Height and bulk;
> (2) Required open spaces;
> (3) Minimum dimensions of yards or courts;
> (4) Means of egress;
> (5) Basements and cellars in tenements converted to dwellings.
>
> * * *
>
> c. For multiple dwellings and buildings erected or to be erected or altered pursuant to plans filed on or after December fifteenth, nineteen hundred sixty-one, or before such date provided such plans comply with the provisions of paragraph d of subdivision one of section twenty-six, provisions relating to:
>
> (1) Height and bulk;
> (2) Required open spaces; or
> (3) Minimum dimensions of yards and courts.
>
> Variations or modifications may be granted pursuant to Paragraphs b and c only on condition . . . that there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape and such variance would be permitted under any provision applicable thereto of the local zoning ordinance; and

WHEREAS, specifically, the Appellant relies on: (1) a plain reading of MDL § 310(2)(a), which does not prohibit the application of that section as the Buildings were constructed prior to 1948; and (2) the fact that a 1962 amendment to § 310(2) did not nullify or modify MDL § 310(2)(a) and statutory construction principles require an interpretation which gives effect to all the terms of the law; and

WHEREAS, the Appellant cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 144, "[i]n the course of constructing a statute, the court must assume that every provision thereof was intended for some useful purpose and [a] construction which would render a statute ineffective, must be avoided"; and

WHEREAS, the Opposition contends that the Board should review the request to vary the MDL requirements,

pursuant to MDL § 310(2)(c); and

WHEREAS, the Opposition contends that (1) § 310(2)(a) was limited to pre-1948 buildings that are not being altered (as defined in the MDL) and (2) that the intent was that all buildings altered after 1948 were expected to comply with the MDL; and

WHEREAS, the Opposition notes that §§ 310(2)(b) and (c) specifically refer to "alterations" (a defined term in the MDL) unlike § 310(2)(a), which is silent as to the extent of construction; and

WHEREAS, the Opposition asserts that § 310(2)(c) should apply and that the Appellant would not be able to make the findings, which do not include provisions for means of egress and do include a requirement that the subject building be unique; and

WHEREAS, the Board has analyzed the threshold issue as to whether it should review the Appellant's requests to vary the MDL pursuant to MDL § 310(2)(a) or § 310(2)(c); and

WHEREAS, the Board notes that a plain reading of § 310 suggests that there are two possible sub-sections which apply to the Buildings – sub-section (a), which applies to buildings in existence on July 1, 1948, and sub-section (c), which applies to plans filed after December 15, 1961, as the Buildings were constructed before 1948 and the plans for the enlargement were filed after December 15, 1961; and

WHEREAS, the Board finds that statutory interpretation principles dictate that both sub-sections must have meaning and, thus, only one can be applicable to the analysis of the Buildings' non-compliance; and

WHEREAS, in answering the question of whether to apply (a) or (c) to the Buildings that were constructed prior to 1948 (as specified in (a)) and altered pursuant to plans filed after 1961 (as specified in (c)), the Board looks to the legislative history of § 310; and

WHEREAS, in consideration of the body of legislative history, which includes communication from the parties involved in the amendment process since the MDL's adoption in 1929, the Board concludes that the date of the original construction controls and sub-section (a) applies to pre-1948 buildings, whenever they are altered; and

WHEREAS, the Board notes that MDL § 310(2)(a) addresses buildings existing on July 1, 1948 (the effective date of the provision) and lists five building parameters which may be modified; it remains un-changed since its initial adoption; and

WHEREAS, further, the Board notes that sub-section (a), which was drafted to address buildings constructed prior to July 1, 1948, has not expired, has not been superseded by any amendments, and is in full force and effect for the current renovations of buildings constructed prior to July 1, 1948 and there is nothing in the legislative documents that reflects any intent to affect or limit the Board's power to grant modifications to the current renovation of buildings in existence on July 1, 1948; and

WHEREAS, the Board notes that a 1962 amendment includes the addition of MDL § 310(2)(c), which remains as originally adopted, and applies to buildings built or altered after December 15, 1961, pursuant to plans filed after December 15, 1961; and

WHEREAS, further, the Board notes that sub-section (b) was limited by term and has expired and since the expiration of sub-section (b), sub-section (c) assumed applicability over all buildings built after July 1, 1948 (which had historically been the subject of sub-section (b)); a reading that sub-section (c) applies to all buildings altered after December 15, 1961 would render sub-section (a) ineffective; and

WHEREAS, accordingly, the Board finds that sub-section (c) applies only to the construction of new buildings and the renovation of buildings constructed after July 1, 1948; and

WHEREAS, although the Board notes that the Opposition is accurate that alteration has a specific meaning in the MDL, the contention that in the period between the 1948 adoption of MDL § 310 and the time of its 1962 amendment, pre-1948 buildings could only be modified in ways that did not reach the level of alteration, is strained; and

WHEREAS, additionally, the Board finds that there is no legislative history to support the claim that modifications listed within § 310(2)(a), including those to Height and Bulk, which would involve structural changes (which are specifically included in the definition of alteration) or Means of Egress (which are also specifically included in the definition of alteration) would be prohibited; and

WHEREAS, further, the Board notes that pre-1948 buildings include pre-1929 buildings, which were constructed prior to the adoption of the MDL, and there is no meaningful reason to restrict buildings built before the adoption of the MDL and those built between 1929 and 1948, which were required to be constructed in compliance with the MDL, in the same way; and

WHEREAS, finally, the legislative history reflects that the 1961 and 1962 amendments were enacted to address buildings constructed after 1948 and there is no indication that the amendments were intended to extend to pre-1948 buildings; and

WHEREAS, in conclusion, based on a review of the legislative history and prior Board decisions, the Board has determined that MDL § 310(2)(a) is the appropriate sub-section under which to review the subject appeal for modifications; and

WHEREAS, the Board notes that MDL § 310(2)(a) does not require a finding that the Buildings be unique; and

Modification of the MDL

WHEREAS, the Appellant requests that the Board modify MDL § 211, generally, rather than individual MDL provisions, and to view the application as one height and bulk waiver; and

WHEREAS, MDL § 211(1) – Height and Bulk – provides, in pertinent part:

> No tenement shall be increased in height so that its height shall exceed by more than one-half the width of the widest street upon which it stands. Except as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April

eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date; and

WHEREAS, the Appellant asserts that all non-compliance arises from the increase in height and bulk and thus the Board should view all of the non-compliances within the context of height and bulk, rather than as individual conditions, as identified by DOB in its objections; and

WHEREAS, the Appellant asserts that a height and bulk waiver, as permitted by MDL § 310(2)(a), would satisfy all of the outstanding objections because all of the objections arise from the increase in height and bulk and, because the Board can modify height and bulk, it can modify every requirement that is associated with the increase in height and bulk; and

WHEREAS, the Appellant asserts that there is no need to apply the required MDL § 310 findings to each of the MDL objections, but rather the Board should just apply the findings once to the overall building requirements; and

WHEREAS, although the Appellant requests that the Board consider all of the objections within the context of a single umbrella waiver to height and bulk, it does address each DOB objection for MDL non-compliance, by section, and describes the proposed measures to provide a form of equivalency in support of its modification request; and

WHEREAS, the Opposition argues that the broad approach that the Appellant suggests is not within the spirit of the law; and

WHEREAS, the Board has determined that the Appellant's argument about whether or not MDL § 211 covers all of the objections not convincing since an individualized approach is required to determine whether there is practical difficulty and whether the spirit of the law is maintained with the modifications; and

WHEREAS, further, the Board finds that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress - which the Board has express authority to vary; and

WHEREAS, thus, the Board does not find it necessary to make a determination in the context of this appeal as to whether the general provision of MDL § 211(1) – Height and Bulk – or the Board's specific enabling section, MDL § 310(2)(a), is the only means of analyzing the requests to modify the cited MDL provisions; and

WHEREAS, the Board finds it appropriate to analyze the Appellant's request as individual areas of non-compliance, pursuant to its express authority in MDL § 310(2)(a); and

WHEREAS, the Board notes that the Opposition disagrees with the Appellant that all objections arise under height and bulk and are contemplated by MDL § 211, rather than MDL 310(2), albeit sub-section (c), but concedes that all of the MDL objections are related to egress and fire protection; and

The Practical Difficulty or Unnecessary Hardship Finding

WHEREAS, the Appellant describes each of the requirements of bringing the Buildings into compliance with the MDL and the practical difficulties in terms of construction-related logistics and the unnecessary hardship in terms of monetary expenditure, associated with each relevant provision; and

WHEREAS, specifically, the Appellant notes the practical difficulty of widening hallways and stairways, which includes relocating building infrastructure, redesigning apartments (some rooms may be rendered noncompliant with other provisions of the MDL), and removal of floors, beams, walls and joists; and

WHEREAS, the Opposition asserts that the difficulty and hardship are self-created since the Appellant chose to enlarge the Buildings and that, if it had not chosen to do so, it would not have been required to comply with the MDL; and

WHEREAS, the Opposition deems that certain requirements, such as the removal of the seventh floor are not legitimate hardships since the removal would not be required if the Appellant had not constructed an enlargement contrary to the MDL; and

WHEREAS, the Board agrees in part with the Appellant and, in part, with the Opposition; and

WHEREAS, specifically, the Board agrees with the Appellant that even if the Buildings were viewed as they were prior to any of the subject construction, there is logistical difficulty associated with achieving certain of the MDL requirements, including widening existing staircases and hallways and adding a vestibule, which in the Buildings, would require the redesign of infrastructure and a significant portion of the individual apartments; and

WHEREAS, as to the monetary expenditures, the Board accepts that there would be significant costs associated with the noted changes, but is not required to review a financial analysis within the context of the requested variance to the MDL as it may make the finding based on practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees with the Opposition that the costs and labor associated with demolishing the seventh floor should not be included in an analysis of hardship since the Appellant constructed it without consideration of the building-wide implications, per the MDL, of adding a seventh floor; and

WHEREAS, the Board finds the Appellant's assertion of hardship associated with the removal of the partial seventh floor space to be unconvincing and rejected the Appellant's initial proposal which included the seventh floor; and

WHEREAS, the Board agrees with the Appellant that whether the modifications required to the common space throughout the Buildings were performed at the outset of the project or now, after construction has occurred, there would be practical difficulty in achieving a majority of the conditions in strict compliance with the MDL; the removal of the seventh floor, which triggers a host of requirements beyond the numerous requirements triggered by the sixth floor, eliminates requirements including that the Buildings be fireproof, as opposed to the non-fireproof condition which is permitted for buildings up to a height of six stories; and

WHEREAS, thus, the Board agrees with the Opposition that the removal of the seventh floor does not reflect a practical difficulty or hardship; and

WHEREAS, accordingly, the Board agrees that the

Appellant has established a sufficient level of practical difficulty and hardship for compliance with the MDL requirements unrelated to the seventh floor, rejects the assertions of practical difficulty for the seventh floor and has directed the Appellant to remove it, which the Appellant has agreed to do; and

The Proposed Building Conditions

WHEREAS, throughout the hearing process, the Appellant proposed a variety of safety measures, including those reflected on the original DOB approved plans, and provided analysis from fire safety consultants as to the fire safety of certain conditions; and

WHEREAS, the additional measures that the Appellant has included or proposes to include, as reflected on the proposed plans, are the (1) installation of a full automatic wet sprinkler system in the common areas, cellar, and all apartment interiors; (2) installation of hard-wired smoke detectors and emergency lighting with back-up battery power in all apartments and common areas; (3) installation of new fire escapes and ladders at the front and rear of the Buildings; (4) replacement of wood apartment doors with one and one-half-hour fire-rated self-closing metal doors; (5) installation of two layers of gypsum board on either side of the hallway and stairway walls to achieve three-hour equivalent fire separation; (6) replacement of stair treads with non-combustible material (marble or stone); (7) addition of two layers of gypsum to the underside of the staircases; (8) addition of a skylight at the top of each stairway (with a minimum area of 20 sq. ft.) and a ridge vent (with a minimum area of 40 sq. in.) with wire screen above and below plain glass as per MDL § 26.2; (9) installation of a layer of gypsum board on the entire cellar ceiling; (10) installation of non-combustible metal deck with poured concrete of a thickness of 45 inches between first floor joists and non-combustible finished floor in the ground floor entrance hall and public hallway to achieve three-hour fire separation; and (11) installation of non-combustible metal studs, one-inch core board, and two layers of gypsum board beneath second-floor joists in the first floor entrance hall and public hallway to achieve an equivalent three-hour fire separation; and

WHEREAS, the Appellant included submissions from fire safety consultants and information from the National Fire Safety Protection Agency, which advocates the installation of sprinkler systems and documents improved fire safety with such measures; and

The Spirit of the Law

WHEREAS, the Board has reviewed the proposed fire safety measures in light of the findings required by MDL § 310(2)(a) "[the Board has the power to vary or modify any provision of this chapter] provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done" and finds that the measures meet the requirements of maintaining the spirit and intent of the law, to allow for the alteration of multiple dwellings while providing additional measures in the spirit of those contemplated by the specified requirements of the MDL; and

WHEREAS, as noted, the Board agrees with the Opposition that there is no basis to support the inclusion of a seventh floor, primarily because the addition of any floor above the sixth floor triggers a requirement that the Buildings be fireproof and triggers the requirement for an elevator; and

WHEREAS, the Board recognizes the significant change in the requirements for a six or fewer story building (that it may be non-fireproof) per the MDL and the requirements for a seven or greater story building: (1) that it be fireproof and (2) that it provide an elevator, to be compelling and that the spirit of the law would be compromised with the allowance of the seventh floor; and

WHEREAS, the Board notes that the requirements that the Buildings be fireproof and provide an elevator, which the Appellant asserts would be practically difficult and impose a hardship, are eliminated with the elimination of the seventh floor; and

WHEREAS, during the hearing process, the Board was clear that it would not support a proposal that included a seventh floor and, accordingly, the Appellant removed a seventh floor from the plans; and

WHEREAS, the Board does not approve any construction on the roof that constitutes a floor, for MDL purposes; and

WHEREAS, the Board acknowledges that there are practical difficulties with bringing the subject pre-1929 Buildings into compliance with the MDL; and

WHEREAS, however, the Board recognizes that the MDL contemplates the enlargement of buildings and that it has express authority to approve such proposals, provided that the findings are met; and

WHEREAS, the Board finds that public health, safety, and welfare are preserved and substantial justice is done if the increased measures are installed and maintained; and

WHEREAS, specifically, the Board finds that the installation of full sprinklering throughout the public spaces and individual apartments, rooftop ventilation, smoke detectors and emergency lighting serve to improve fire suppression and aid emergency response; and

WHEREAS, further, the Board finds that increasing the fire-rating of the public halls and staircases, and doors promotes the goal of improved fire separation standards and protected egress; and

WHEREAS, however, the Board notes that it does not set forth any requirement or determination as to the materials proposed and, instead, relies on DOB to establish whether the proposed materials for the walls, ceilings, and stairs, where noted on the plans, achieve the proposed fire-rating or whether alternate materials or construction are required to achieve the proposed fire-rating; and

WHEREAS, the Board notes that, the Appellant has identified different levels of fire-rating throughout the hearing process and that different combinations of materials and fire-rating have been identified by the Appellant's team at hearing, in written submissions, and on plan, and, thus, the Board requests that DOB review the final proposal to confirm the fire-rating; and

WHEREAS, the Board has not imposed the use of certain construction methods or materials, but rather accepts the proposed degree of fire-rating as being within the spirit of

the law; and

WHEREAS, the Board notes that the MDL does not contain a definition for "equivalency" and, thus, any reference to equivalency, in the context of fire-rating, must be established by the Appellant and approved by DOB; and

WHEREAS, accordingly, the Board finds that the proposed construction meets the findings of MDL § 310(2)(a) to the extent that the proposed materials achieve the level of fire-rating the Appellant represents they do, subject to DOB review; and

Good Faith Reliance

WHEREAS, the Appellant makes a supplemental argument that it relied in good faith upon approvals from DOB and its precedent for approving comparable fire safety measures in lieu of MDL compliance; and

WHEREAS, the Board notes that it has not reviewed the Appellant's claim of good faith reliance because it has not completed the good faith reliance analysis, which includes consideration of whether the permit was valid when issued and whether there was a reasonable basis to charge the Appellant with constructive notice that the permit should not have been issued; and

WHEREAS, instead, the Board considered the findings required under MDL § 310(2)(a) and whether the Appellant has made such findings and warrants the modifications it requests, without addressing the good faith reliance claim; and

WHEREAS, the Board notes that DOB approved an earlier iteration of the proposed measures and accepted the Appellant's original plan; and

Conclusion

WHEREAS, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and varies the noted MDL sections except those within DOB objections numbers 2, 6, and 10 because it deems that the non-compliances associated with the addition of the seventh floor cannot be remedied in a way that is within the spirit of the law; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application; and

WHEREAS, the Board notes that, according to the Appellant, the proposal will be in full compliance with all other relevant regulations including the Zoning Resolution; and

WHEREAS, the Board does not take any position as to any zoning compliance and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, the Board's determination in this matter is limited to conditions associated with the cited MDL objections, dated July 6, 2009, and not with any outstanding or future zoning or any other kind of objections; and

WHEREAS, as to the Appellant's assertion that it establishes equivalent fire-ratings, such as three-hour equivalent fire-rating for the hallway walls, the Board requests that DOB review and approve the conditions for compliance with such a requirement and takes no position as to the capacity of the materials used or their fire safety rating.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated July 6, 2009, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 26, 2010" nine (9) sheets and "Received July 29, 2010" one (1) sheet; and on further condition:

THAT the construction shall include the: (1) installation of a full automatic wet sprinkler system in the common areas, cellar, and all apartment interiors; (2) installation of hard-wired smoke detectors and emergency lighting with back-up battery power in all apartments and common areas; (3) installation of new fire escapes and ladders at the front and rear of the Buildings; (4) replacement of wood apartment doors with one and one-half-hour fire-rated self-closing metal doors; (5) installation of sufficient materials in the hallway and stairway walls to achieve three-hour fire separation; (6) replacement of stair treads with non-combustible material (marble or stone); (7) addition of two layers of gypsum to the underside of the staircases; (8) addition of a skylight at the top of each stairway (with a minimum area of 20 sq. ft.) and a ridge vent (with a minimum area of 40 sq. in.) with wire screen above and below plain glass as per MDL § 26.2; and (9) installation of sufficient materials within the cellar ceiling, first floor entrance hall (floor, ceiling, and walls) and public hallway walls to achieve three-hour fire separation within the first floor entrance hall and the public hallways on all floors; and

THAT the seventh floor be removed and all proposed fire safety measures be installed by February 3, 2011 and a Certificate of Occupancy be obtained by August 3, 2012;

THAT any additional materials installed to increase the fire-rating of the public halls or staircases shall not reduce the width of the public halls or staircases any more than what is reflected on the proposed plans; if additional materials beyond those reflected on the plans are required, they shall be installed on the side of the walls within the apartments;

THAT the Department of Buildings shall review all construction materials to confirm compliance with the required fire-rating; where conditions in the resolution are less specific as to the proposed materials and more restrictive as to fire-rating than the conditions reflected on the approved plans, the conditions in this resolution shall be controlling;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 3, 2010.

67-10-A
APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.
SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single-family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Gary D. 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 April 23, 2010, acting on Department of Buildings Application No. 420129970, 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 General City Law Article 3, Section 35 and Department of Buildings policy;" and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in the *City Record*, with a continued hearing on August 3, 2010, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated May 20, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated, July 28, 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 April 23, 2010, acting on Department of Buildings Application No. 420129970 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 May 4, 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 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, August 3, 2010.

102-10-A
APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.
SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.
PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, 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 June 1, 2010, acting on Department of Buildings Application No. 420141590, reads in pertinent part:

"A1– The existing building to be 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 and/or unmapped service road contrary to General City Law Article 3, Section 35 and Department of Buildings policy;" and

WHEREAS, a public hearing was held on this

application on August 3, 2010, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 1, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections provided the building is fully sprinklered; and

WHEREAS, by letter dated June 28, 2010, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 28, 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 June 1, 2010, acting on Department of Buildings Application No. 420141590 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 June 7, 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, August 3, 2010.

298-09-A

APPLICANT – Breezy Point Cooperative Inc., for Ann Baci, owner.

SUBJECT – Application October 23, 2009 – Reconstruction and enlargement of an existing single family home not fronting a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 109 Beach 217th Street, east side Beach 217th Street, 160' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 10 A.M., for deferred decision.

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.

SUBJECT – Application May 10, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 zoning district.

PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, 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 August 17, 2010, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 13, 2010
1:30 P.M.

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

ZONING CALENDAR

9-10-BZ
CEQR #10-BSA-041Q
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.
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 July 29, 2010 acting on Department of Buildings Application No. 420017458, reads in pertinent part:

> "Proposed Use Group 6 eating and drinking establishment in R1-2 zoning district is contrary to ZR Section 22-00;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R1-2 zoning district, the use of an existing one-story building as an eating and drinking establishment (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, with continued hearings on April 27, 2010, May 25, 2010 and June 22, 2010, and then to decision on August 3, 2010; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term be limited to 15 years; (2) the flooding in the southwest corner of the parking lot be remediated in a way that will not damage the wetlands area located to the rear of the site; (3) the closing time be at 2:00 a.m., daily; (4) the area at the front remain landscaped; (5) the dumpsters be placed in the rear of the property; and (6) the parking lot be secured when the premises is closed; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application with the same conditions as the Community Board regarding landscaping, the placement of dumpsters, and securing the parking lot; and

WHEREAS, State Senator Frank Padavan and City Council Member Daniel J. Halloran, III, provided written testimony in opposition to this application, citing concerns with storm water and sewer runoff into the adjacent wetlands and the flooding issue at the at the southwest corner of the parking lot; and

WHEREAS, the Douglaston Civic Association provided oral testimony in opposition to this application; and

WHEREAS, the Alley Pond Park Alliance provided written testimony in opposition to this application, citing concerns with environmental and health issues at the site, and the lack of action by the owner to address these issues; and

WHEREAS, a residential property owner located at 46-65 Hanford Street, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"), citing the following primary concerns: (1) the proposed Use Group 6 use is not permitted because the use is not grandfathered at the site and the previous variance permitting such use has expired; (2) the applicant's financial analysis does not establish that it is the only scenario that will provide a reasonable return for the site; (3) the drainage at the site is insufficient and the storm water and sewer runoff will have a detrimental effect on the adjacent wetlands; (4) any hardship at the site has been self-created; and (5) the proposal does not reflect the minimum variance necessary to afford relief; and

WHEREAS, the applicant argues that the Opposition does not have legal standing to oppose this application because 46-65 Hanford Street is located outside the 400-ft. radius of the site for which mandatory notice is provided and the Opposition has not alleged any special damage it will suffer from the proposed action that is different from that of the public at large; thus, the Opposition has not established that it is an "aggrieved person" sufficient to confer standing; and

WHEREAS, the Board notes that New York State courts have stated that as a general rule, in order to have standing a party must show that an administrative action will have a harmful effect on them that is in some way different from the public at large, and that the interest asserted is arguably within the zone of interest to be protected by the statute (see Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of Town of North Hempstead, 69 N.Y.2d 406, 412 (1987)); and

WHEREAS, the Board notes that while it has accepted the papers submitted by the Opposition into the record and has allowed the Opposition to appear at the Board's public hearings in opposition to the application, these actions do not constitute an admission or agreement on the question of standing; and

WHEREAS, the Board further notes that the general practice in the public hearing process is to accept testimony

from the community at large into the record, without taking a position as to whether each and every individual that seeks to provide written or oral testimony has legal standing before the Board or in any other forum; and

WHEREAS, accordingly, the Board questions whether the Opposition, which has not established that the Board's actions will have a harmful effect on him that is in some way different than the public at large, meets the minimum threshold required by New York State courts for legal standing, and, thus, has not determined that the Opposition would have standing in any other forum; and

WHEREAS, another community resident, represented by counsel, provided written testimony in opposition to this application, citing concerns that the sale of the subject property to the current owners involved fraud; and

WHEREAS, the Board notes that the allegations of fraud are not within its jurisdiction under the subject variance application; and

WHEREAS, several other community residents provided testimony in opposition to this application; and

WHEREAS, the subject site is located on an irregular "L"-shaped lot on the northwest corner of Northern Boulevard and 232nd Street, within an R1-2 zoning district; and

WHEREAS, adjacent to the rear of the site is Alley Pond Park, a New York City Parks and Recreation Department nature preserve; and

WHEREAS, the site has approximately 135 feet of frontage along Northern Boulevard, a depth of approximately 214 feet, and a lot area of 50,034 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-story commercial building and an accessory parking lot for 118 vehicles; and

WHEREAS, the applicant proposes to increase the height of the existing building from 15'-0" to 19'-6", make interior renovations to the building, and operate it as a Use Group 6 eating and drinking establishment; and

WHEREAS, the applicant states that the proposed one-story building will maintain the existing floor area of 7,076 sq. ft., and that there will be 118 accessory parking spaces; and

WHEREAS, on January 20, 1976, under BSA Cal. No. 308-75-BZ, the Board granted a variance to permit the operation and enlargement of an existing one-story restaurant at the subject site, and the addition of a cabaret use limited to patron dancing, for a term of ten years, which expired on January 20, 1986; and

WHEREAS, on November 9, 1976, the grant was amended to limit the variance to a Use Group 6 eating and drinking establishment instead of the previously-approved Use Group 12 eating and drinking establishment; and

WHEREAS, on March 30, 1982, the grant was amended to permit an increase in the size of the open accessory parking lot from 44 spaces to 118 spaces; and

WHEREAS, on December 20, 1983, the grant was amended to legalize the paving of the landscaped area at the front of the restaurant; and

WHEREAS, most recently, on September 8, 1986, the Board extended the term of the variance for an additional ten years, which expired on January 20, 1996; and

WHEREAS, the applicant now proposes to restore the Use Group 6 eating and drinking establishment use; and

WHEREAS, as to the Opposition's argument that the prior variance expired and the proposed Use Group 6 use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance; and

WHEREAS, because the prior variance has expired and commercial use is not permitted in the subject R1-2 zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the irregular shape of the lot and its limited frontage on Northern Boulevard; (3) the site's location in a flood zone; and (4) the adjacent commercial uses and location on a heavily-trafficked commercial corridor; and

WHEREAS, as to the history of development at the site, the applicant represents that the subject site has operated as an eating and drinking establishment since approximately 1950; and

WHEREAS, as noted above, the site was the subject of a Board variance permitting an eating and drinking establishment on January 20, 1976, until its expiration on January 20, 1996; and

WHEREAS, the applicant states that after the expiration of the variance, the site continued to operate as an eating and drinking establishment until approximately three years ago; and

WHEREAS, the applicant represents that, due to the historic use of the premises as an eating and drinking establishment, the site has a distinct commercial character and the existing building on the site, which was designed for commercial use, does not lend itself to efficient re-use for residential or community facility use; and

WHEREAS, as to the irregular shape of the site, the applicant states that it is an "L"-shaped site with 135 feet of frontage on Northern Boulevard, a depth of 214 feet, and a width of 270 feet at the rear of the site; and

WHEREAS, the applicant represents that the narrow street frontage on Northern Boulevard in comparison to the site's depth, and install a private street in order to access as-of-right residential units; and

WHEREAS, the applicant states that the layout of the site and the need to install a private street limit the as-of-right potential for a residential development; and

WHEREAS, specifically, the applicant states that the total development permissible on the subject 50,034 sq. ft. lot is approximately 25,000 sq. ft. (0.50 FAR), and that a regularly-shaped lot could be developed with six to eight detached single family homes ranging from 3,100 sq. ft. to 4,100 sq. ft. of floor area, while the unusual layout of the subject lot limits the as-of-right residential development to four detached homes with a 4,800 sq. ft. of floor area each and a total floor area of 19,200 sq. ft., which is only approximately 75 percent of what could otherwise be developed on the site; and

WHEREAS, the applicant notes that although the four

proposed homes could potentially increase in size, the market for such large homes is hindered by the site's location adjacent to auto-related commercial uses on both sides; and

WHEREAS, the applicant states that a residential development would also require the construction of a private sewer in the bed of the private street in order to connect with Northern Boulevard; and

WHEREAS, the applicant submitted a cost estimate indicating that the cost of developing the required private street for an as-of-right residential use would add $105,201 to the construction costs at the site, and the private sewer would cost an additional $558,000; and

WHEREAS, the applicant states that an as-of-right community facility use would not require the construction of a private street, but would nonetheless require a sewer connection with Northern Boulevard, which would add $46,400 in development costs; and

WHEREAS, as to the site's location in a flood zone, the applicant submitted a FEMA Flood Insurance Rate Map and a letter from its architect reflecting that the site is located within a flood zone; and

WHEREAS, the applicant states that as a result of the site's location within a flood zone, any residential or community facility development would require the installation of piles to a depth of up to 100 feet, to insure the structural stability of the new development; and

WHEREAS, the applicant submitted cost estimates reflecting that the need to install piles would result in an additional $256,200 for an as-of-right residential development, and $708,600 for an as-of-right community facility development; and

WHEREAS, the applicant represents that, given the costs associated with the installation of piles due to the site's location in a flood zone, it is not feasible to construct a new residential or community facility development at the site; and

WHEREAS, as to the site's location, the applicant states that the site is located on Northern Boulevard, a heavily-trafficked commercial corridor; and

WHEREAS, the applicant further states that the site is located between an automotive service station immediately to the west and a car wash to the east; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that other uses in the vicinity of the site include a car dealership and a driving range, and that there are no residential or community facility uses within 400 feet of the site; and

WHEREAS, thus, the applicant represents that a conforming residential or community facility use would be incompatible with the heavily commercial nature surrounding the site along Northern Boulevard; and

WHEREAS, the Board agrees that the combination of conditions at the site result in a conforming new development that cannot carry the additional costs of construction; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right residential development with four detached homes; (2) an as-of-right two-story community facility building; and (3) the proposed one-story Use Group 6 eating and drinking establishment; and

WHEREAS, the study concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposed use would realize a reasonable return; and

WHEREAS, during the course of the hearing, the Board directed the applicant to revise its financial analysis including the site value, the analysis of the as-of-right residential scenario, and the commercial sites used as comparables for the subject site; and

WHEREAS, in response, the applicant revised its financial analysis, and after several submissions in response to the concerns raised during the hearings, the Board was satisfied the applicant had established that only the proposed building use would realize a reasonable return; and

WHEREAS, throughout the course of the hearings, the Opposition raised additional concerns about the applicant's financial analysis, and questioned the methodology of the financial reports submitted to the Board; and

WHEREAS, the Board has reviewed the methodology and finds it acceptable for the purpose of meeting the finding under ZR § 72-21(b); and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use 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 represents that the surrounding area is characterized by commercial uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram indicating that the only uses within 400 feet of the subject site are commercial buildings located along Northern Boulevard, and park land; and

WHEREAS, as noted above, there are commercial uses located on either side of the site, with an automobile service station immediately to the west and a car wash to the east; and

WHEREAS, as to bulk, the applicant represents that there will be no change in the footprint of the existing building, which has been located at the site for several decades; and

WHEREAS, further, the applicant states that the proposal complies with the residential bulk regulations of the underlying R1-2 zoning district related to floor area, height, open space, and lot coverage; and

WHEREAS, the Opposition contends that the proposed commercial use is not compatible with the adjacent park and wetlands; and

WHEREAS, the Board notes that even a conforming residential development would involve the construction of four homes and a private road system, would increase the traffic on the site, and would have to address similar issues with runoff

into the adjacent wetlands; and

WHEREAS, at hearing, the Board and the Opposition raised concerns about the drainage issues at the site and potential issues related to storm water and sewer runoff; and

WHEREAS, the Parks and Recreation Department submitted a letter requesting that any variance issued by the Board for the subject site be conditioned on the owner developing and implementing a storm water management plan approved by the Department of Environmental Protection ("DEP"), the Department of Environmental Conservation ("DEC"), and the Parks and Recreation Department; and

WHEREAS, in response, the applicant submitted a sewer connection application and storm water management plan that was submitted to the Department of Buildings ("DOB"), and will be reviewed by DEP; and

WHEREAS, the Board directed the applicant to comply with the landscaping and grading requirements under ZR § 37-90, which governs all developments that provide an open parking area accessory to commercial uses that contain 18 or more spaces, including issues pertaining to drainage; and

WHEREAS, the applicant submitted a letter from an environmental consulting firm, stating that it will attend to any necessary filings at DEC related to the adjacent wetlands; and

WHEREAS, the Board notes the Community Board's conditions for recommending approval of this application and agrees that they are appropriate; thus, as a condition of the Board's grant: (1) the proposed restaurant will close no later than 2:00 a.m.; (2) the area at the front of the site will remain landscaped; (3) the dumpsters will be placed in the rear of the property; and (4) the parking lot will be secured when the restaurant is closed; and

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

WHEREAS, the Opposition contends that the alleged hardship is self-created because the owner purchased the property with knowledge that commercial use was not permitted on the site; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Opposition argues that the proposal does not reflect the minimum variance required to afford relief because the proposal will require approvals from the Board, DOB, and DEC, and is located adjacent to freshwater wetlands; and

WHEREAS, the Board notes that ZR § 72-21(e) requires that the bulk and/or intensity of use of the proposal, along with its return on investment, must be the minimum necessary to afford the owner relief; it does not refer to whether additional administrative approvals or procedures may be necessary before the proposal can operate; and

WHEREAS, the Board further notes that the proposal is merely retaining the existing, relatively small 7,076 sq. ft. building on the site as an eating and drinking establishment (Use Group 6) -- a use that is found to be compatible in many districts that have residential and community facility uses; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA041Q, dated January 21, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R1-2 zoning district, the use of an existing one-story building as an eating and drinking establishment (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and; *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 July 6, 2010"- six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,076 sq. ft. (0.14 FAR); a total height of 19'-6"; and a maximum of one-story, as indicated on the BSA-approved plans;

THAT the site shall comply with ZR § 37-90, inclusive;

THAT the eating and drinking establishment shall close no later than 2:00 a.m.;

THAT the area at the front of the site shall remain landscaped;

THAT the dumpsters shall be located at the rear of the property;

THAT the parking lot shall be secured when the

restaurant is closed;

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

THAT a certificate of occupancy shall be obtained by August 3, 2014;

THAT the applicant shall pursue all applicable DEP and DEC approvals based on the scope of work submitted to the Board;

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

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

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

THAT 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, August 3, 2010.

13-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.

SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 23, 2009, acting on Department of Buildings Application No. 320054622, reads in pertinent part:

"The proposed horizontal and vertical enlargement of the existing two-family residence in an R3-1 zoning district:

1. Creates a new noncompliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to side yards and is contrary to Section 23-461(a) ZR.
4. Increases the degree of non-compliance with respect to rear yard and is contrary to Sections 23-47 and 54-31 ZR;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; and

WHEREAS, a public hearing was held on this application on March 16, 2010, after due notice by publication in *The City Record*, with continued hearings on April 27, 2010, June 8, 2010 and July 13, 20101, and then to decision on August 3, 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 15, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 2,048 sq. ft. (0.49 FAR); and

WHEREAS, the premises 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 approximately 2,048 sq. ft. (0.49 FAR) to approximately 4,064 sq. ft. (0.98 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide lot coverage of 36 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4'-10" along the northern lot line (a side yard with a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-10" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40'-0" by 100'-0" reflected in the tax map on record at the Department of Finance ("DOF") and the lot dimensions of 40'-0" by 104'-0" claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40'-0" by 104'-0"; and

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

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

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

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

Therefore it is resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *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 June 17, 2010"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,064 sq. ft. (0.98 FAR); an open space of 64 percent; a lot coverage of 36 percent; a side yard with a width of 10'-3" along the southern lot line; a side yard with a minimum width of 4'-10" along the northern lot line; and a rear yard with a minimum depth of 22'-10", 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, August 3, 2010.

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

APPEARANCES –

For Applicant: Eric Palatnik

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 1, 2010, acting on Department of Buildings Application No. 320113970, reads:

"1. ZR 23-141(b). The proposed total floor area exceeded the permitted.
2. ZR 23-141(b). The proposed lot coverage exceeded the permitted.
3. ZR 23-141(b). The proposed open space is inadequate.
4. ZR 23-461. The proposed side yards are contrary to the permitted.
5. ZR 23-47. The proposed rear yard is contrary to the permitted;" 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, lot coverage, open space, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with a continued hearing on June 22, 2010, and then to decision on August 3, 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 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"); and

WHEREAS, the subject site is located on the east side

of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,040 sq. ft. (0.42 FAR); and

WHEREAS, the premises 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 1,040 sq. ft. (0.42 FAR) to 2,474 sq. ft. (0.99 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 44 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of 56 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 1'-2" along the western lot line and to increase the width of the existing non-complying side yard along the eastern lot line from 1'-5" to 4'-8" (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 17'-3" at the first floor, and provide a rear yard with a depth of 22'-3" at the second and third floor (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the Opposition contends that the proposal is actually a new building rather than an enlargement, based on the following: (1) the proposal does not retain significant portions of the existing home; and (2) the engineer's affidavit is disingenuous because it was revised as to the type of concrete contained in the existing home; and

WHEREAS, the Opposition further argues that, due to the conflicting information in the engineer's affidavits as to the type of concrete contained in the existing home, the Board should enlist an independent engineer to corroborate the statements made by the applicant's engineer; and

WHEREAS, as to the portions of the existing home that are being retained, the applicant submitted revised plans reflecting that the first floor and portions of the foundation walls and first floor walls will be retained, and submitted the revised engineer's affidavit which states that the plans are accurate as to the portions of the home being retained; and

WHEREAS, the revised engineer's affidavit also states that the existing first floor will be raised by jacking the existing floor joists and that the existing exterior walls, foundation walls, and the footings are composed of pure concrete which is adequate to support the proposed enlargement; and

WHEREAS, the Board notes that the original engineer's affidavit stated that the exterior walls, foundation walls, and footings of the existing home were composed of reinforced concrete, rather than pure concrete; and

WHEREAS, the Board further notes that it is the Department of Buildings' ("DOB") role, and not the Board's, to review construction and enforce compliance with the approved plans and with relevant zoning and Building Code regulations; and

WHEREAS, accordingly, the Board finds that it is appropriate for technical matters, such as the type and strength of concrete, to be subject to DOB, rather than the Board's, review; and

WHEREAS, therefore, the Board rejects the Opposition's assertion that an independent engineer must be retained to analyze the type and strength of the existing home's concrete for review by the Board within the context of the subject special permit; and

WHEREAS, in addition, the Opposition argues that the proposal should be denied because there are a number of mistakes and inconsistencies in the drawings submitted by the applicant and contends that the architect's calculations for the base plane are incorrect; and

WHEREAS, in response, the applicant submitted a letter from the architect explaining his methodology for calculating the base plane; and

WHEREAS, the Board notes that the applicant has submitted revised plans to address the inconsistencies in its drawings, and that the drawings will be subject to DOB review for compliance with all ZR and Building Code regulations; and

WHEREAS, finally, the Opposition argues that the proposed home does not fit within the character of the surrounding neighborhood, and that many of the examples of comparable homes provided by the applicant are non-compliant and have been illegally enlarged, and are out of context with the surrounding neighborhood; and

WHEREAS, in response, the applicant submitted six additional examples of homes in the surrounding area that are comparable in size to the proposed home; and

WHEREAS, the Board notes that several homes, including those on Norfolk Street, have been approved at the Board with similar floor area, side yard, and rear yard waivers; and

WHEREAS, the Board further notes that the perimeter wall and overall height of the proposed home are allowed under the Zoning Resolution, and the applicant is not seeking any waivers for height; and

WHEREAS, the Board notes that the proposed home, with a floor area of 2,474 sq. ft. (0.99 FAR), a height of 31'-10" (which is lower than the maximum permitted height of 35'-0"), and a wider side yard along the eastern lot line than currently exists, only requires waivers for for floor area, lot coverage, open space, side yards and rear yard; and

WHEREAS, the Board further notes that, along with technical matters, compliance with regulations related to the measurement of the base plane, the perimeter wall height and the total height are subject to DOB, rather than the Board's, review; 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 therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; and

WHEREAS, the Board finds that many of the issues raised by the Opposition are based on speculation that the ensuing construction will not comport with the approved drawings, and are not necessarily indicative of bad faith on the part of the applicant; 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 enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 29, 2010"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,474 sq. ft. (0.99 FAR); a lot coverage of 44 percent; an open space of 56 percent; a side yard with a minimum width of 1'-2" along the western lot line; a side yard with a minimum width of 4'-8" along the eastern lot line; and a rear yard with a minimum depth of 17'-3", as illustrated on the BSA-approved plans;

THAT DOB shall review the perimeter wall and total height for compliance;

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, August 3, 2010.

40-10-BZ
CEQR #10-BSA-055K
APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.
SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to §22-10. C4-4A/R5B zoning district.
PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Jordan Most.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 22, 2010, acting on Department of Buildings Application No. 320107406, reads in pertinent part:

"Proposed Use Group 6 commercial use is contrary to 22-10 Zoning Resolution;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the enlargement of the second floor of a two-story building, and the conversion of the building to retail and office use (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 8, 2010, after due notice by publication in *The City Record*, with a continued hearing on July 13, 2010, and then to decision on August 3, 2010; and

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

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

WHEREAS, the subject site is located on an irregularly-shaped through lot with frontage on both Kenilworth Place and Campus Road, approximately 45 feet south of Hillel Place, and is partially within a C4-4A zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 20'-0" of frontage along Kenilworth Place, 20'-8" of frontage along Campus Road, a depth ranging from approximately 102'-10" to

107'-11", and a lot area of 2,142 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant two-story building; and

WHEREAS, the applicant states that the second floor is actually two disconnected partial mezzanines which do not align with regard to height; one is located at the Campus Road frontage and the other is located at the Kenilworth Place frontage; and

WHEREAS, the applicant proposes to convert the existing building to retail use at the first floor and office use at the second floor (Use Group 6), and to convert the two disconnected mezzanine levels into a single complete second floor for office use; and

WHEREAS, commercial use is not permitted in the portion of the site within an R5B zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the existing building on the site; (3) the split lot condition; and (4) the adjacent commercial use; and

WHEREAS, as to the history of development at the site, the applicant states that in 1962, while the site was located entirely within a C4-3 zoning district, permits were issued for the construction of the subject building, to be occupied by a Use Group 6 use, and that a subsequent zoning map change on October 11, 1962 shifted the C4-3 district boundary line such that a portion of the site was located within an R6 zoning district and the subject building became a legal non-conforming commercial use; and

WHEREAS, the applicant states that the subject building was occupied by a Use Group 6 bookstore and offices for over 20 years, until it was replaced by a church (Use Group 4) in 1985; and

WHEREAS, as to the existing building on the site, the applicant states that the site is occupied by a lot-line-to-lot-line legal non-complying commercial building which cannot be reused for as-of-right commercial use due to the discontinuation of such use and the intervening community facility use; and

WHEREAS, the applicant states that the existing building was designed for commercial use and later retrofitted with religious balcony space, and therefore does not lend itself to efficient re-use for a residential use; and

WHEREAS, the applicant further states that the existing building is approximately 20 feet wide by 100 feet deep with no yards and with insufficient access to light and air, and therefore it cannot be efficiently converted into a conforming residential use; and

WHEREAS, the applicant represents that demolition of the existing building and construction of a new one would be economically infeasible due to the excessive costs to demolish the existing building and build one that could accommodate a modern conforming use; and

WHEREAS, the applicant further represents that as-of-right community facility use is also not practically feasible, as the property had been on the market for over two years without an offer from a viable community facility user; and

WHEREAS, the applicant submitted materials from a realty services agency reflecting the marketing efforts that were undertaken to secure a community facility use; and

WHEREAS, as to the split lot condition, the applicant states that approximately 68 percent of the lot is located within an R5B zoning district and approximately 32 percent of the lot is located within a C4-4A zoning district; and

WHEREAS, the applicant notes that because less than 50 percent of the site is located within the commercial zone, the owner is precluded from using the split district rules pursuant to ZR § 77-11, and is ineligible for the BSA special permit pursuant to ZR § 73-52, which would bring the entire building into the C4-4A zoning district, where the proposed Use Group 6 uses are permitted as-of-right; and

WHEREAS, as to the adjacency of commercial uses, the applicant states that there is a two-story commercial establishment located along the southern lot line of the site; and

WHEREAS, the applicant represents that the size and busy nature of the adjacent commercial establishment would decrease the potential rent or sale price for any new residential construction at the site; and

WHEREAS, the Board does not find the adjacency of a commercial use to be a condition that is incompatible with a conforming use, but finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right residential building; (2) an as-of-right community facility building; and (3) the proposed commercial retail and office building; and

WHEREAS, the study concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of commercial and residential uses; and

WHEREAS, the applicant has submitted a land use map of the area indicating that a two-story commercial use is located immediately adjacent to the site to the south, three commercial uses are located directly across from the site on Kenilworth Place, and there is a commercial strip with various commercial shops located along Hillel Place, approximately 45 feet south of the site; and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right within the portion of the site within the

C4-4A zoning district, which is approximately 38 percent of the total site; and

WHEREAS, the applicant states that the majority of the Kenilworth Place frontage is located within the C4-4A zoning district; therefore, the proposed use along Kenilworth Place is essentially as-of-right, except for a small portion of the frontage at the northern end of the site; and

WHEREAS, as noted above, the applicant states that the proposed use would be permitted as-of-right over the entire site pursuant to ZR § 77-11 or by BSA special permit pursuant to ZR § 73-52 if more than 50 percent of the site were located within the C4-4A district; and

WHEREAS, the applicant states that the proposed enlargement of the second floor, to convert the two disconnected mezzanine levels into a single complete second floor, will increase the FAR at the site from 1.59 to 2.0; and

WHEREAS, although ZR § 77-22, which governs bulk regulations for zoning lots divided by district boundaries, is only applicable when the intended use is permitted on the entire zoning lot and therefore does not apply to the subject lot, the applicant represents that the proposed increase in FAR at the site would be permitted under the averaging principles set forth in ZR § 77-22; and

WHEREAS, additionally, the applicant states that the proposed enlargement of the second floor is an entirely internal enlargement and will not change the envelope of the subject building; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with the relevant district regulations; and

WHEREAS, in response, the applicant submitted a signage plan for both the Campus Road and Kenilworth Place frontages, reflecting that the signage complies with the underlying district regulations; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA055K, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C4-4A zoning district and partially within an R5B zoning district, the enlargement of the second floor of a two-story building, and the conversion of the building to retail and office use (Use Group 6), which does not conform to district use regulations, contrary to ZR § 22-00; and; *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 March 22, 2010"- six (6) sheets and "Received June 30, 2010" - two (2) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 4,213 sq. ft. (2.0 FAR); lot coverage of 100 percent; a total height of 25'-0"; and no yards, as indicated on the BSA-approved plans;

THAT signage shall be provided in accordance with the approved signage plan;

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

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

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

THAT 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, August 3, 2010.

58-10-BZ
CEQR No. 10-BSA-065K

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner.

SUBJECT – Application April 22, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Barones Health Club*) in the existing one-story building. M1-2/R6A zoning district/MX8 special district.

PREMISES AFFECTED –16 Eckford Street, east side of

Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 20, 2010, acting on Department of Buildings Application No. 320134662, reads in pertinent part:

> "Proposed physical culture establishment is not permitted as-of-right in a manufacturing zoning district pursuant to ZR 42-10 and therefore requires a ZR 73-36 special permit from the Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-2/R6A zoning district within the MX8 special purpose district, the legalization of a physical culture establishment ("PCE") on the first floor of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, and then to decision on August 3, 2010; and

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

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

WHEREAS, the subject site is located on the east side of Eckford Street, between Engert Avenue and Newton Street, in an M1-2/R6A zoning district within the MX8 special purpose district; and

WHEREAS, the site is a single zoning lot occupied by three buildings: (1) a three-story mixed-use industrial/commercial building located on the northwestern portion of the lot (22 Eckford Street); (2) a one-story industrial building located on the northeastern portion of the lot (20 Eckford Street); and (3) a one-story commercial building located on the southern portion of the lot (16 Eckford Street); and

WHEREAS, the PCE occupies a total floor area of 4,710 sq. ft. on the first floor of the building located at 16 Eckford Street; and

WHEREAS, the PCE is operated as Quick Fitness; and

WHEREAS, the proposed hours of operation are from 6:00 a.m. to 11:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since June 10, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between June 10, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10-BSA-065K, dated April 21, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-2/R6A zoning district within the MX8 special purpose district, the legalization of a physical culture establishment on the first floor of an existing one-story commercial building, contrary

to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2010"–One (1) sheet; "Received June 30, 2010" – Two (2) sheets and "Received July 20, 2010" – one (1) sheet and *on further condition*:

THAT the term of this grant shall expire on June 10, 2020;

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

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

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

THAT a new Certificate of Occupancy shall be obtained by August 3, 2011;

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

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

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

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

Adopted by the Board of Standards and Appeals, August 3, 2010.

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

APPEARANCES –

For Applicant: Phillip Rampulla and Mark Londow.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

31-09-BZ

APPLICANT – Eric Palatnik, PC, for R & R Auto Repair & Collision, owner.

SUBJECT – Application February 27, 2009 – Special Permit (§11-411, §11-412, §11-413) for re-instatement of previous variance, which expired on November 12, 1990; amendment for a change of use from a gasoline service station (UG16b) to automotive repair establishment and automotive sales (UG16b); enlargement of existing one story structure; and Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 117-04 Sutphin Boulevard, southwest corner of Foch Boulevard, Block 1203, Lot 13, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 24, 2010 at 1:30 P.M., for adjourned hearing.

173-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC, for 839-45 Realty LLC, owner; 839 Broadway Realty LLC, lessee.

SUBJECT – Application May 21, 2009 – Variance (§72-21) to allow a seven-story mixed use building, contrary to use regulations (§32-00, 42-00). C8-2/M1-1 zoning districts.

PREMISES AFFECTED – 845 Broadway, between Locust and Park Streets, Block 3134, Lot 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Howard Goldman and Chris Wright.

THE VOTE TO REOPEN 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 August 24, 2010, at 1:30 P.M., for continued hearing.

194-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD # 18BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for adjourned hearing.

234-09-BZ
APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.
SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.
PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Josh Rinesmith and Zarko Ristic.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

251-09-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bethany House of Worship Incorporated, owner.
SUBJECT – Application August 28, 2009 – Variance (§72-21) to permit the development of a two-story community facility (*Bethany Church*). The proposal is contrary to §§ 24-34 (front yard) and 25-31 (parking). R3-2 zoning district.
PREMISES AFFECTED – 130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue. Block 11727, Lot 58, Borough of Queens.
COMMUNITY BOARD #10Q
APPEARANCES –
For Applicant: Adam W. Rothkrug.
For Opposition: Helen Leahy.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

325-09-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.
SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue (*Congregation Yetev Lev*), contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.
PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Sheldon Lobel and Abe Berkawitz.
For Opposition: Stuart A. Klein.
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 September 21, 2010, at 1:30 P.M., for decision, hearing closed.

65-10-BZ
APPLICANT – Eric Palatnik, P.C., for Anna Shteerman, owner.
SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 55 Beaumont Street, east side of Beaumont Street, south of Hampton Avenue, Block 8728, Lot 83, Borough of Brooklyn.
COMMUNITY BOARD #15BK
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 August 17, 2010, at 1:30 P.M., for decision, hearing closed.

66-10-BZ
APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler
SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.
PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik and Sergey Tishaev.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

86-10-BZ
APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.
SUBJECT – Application May 12, 2010 – Special Permit (§§11-411 & 11-412) for the re-instatement of a previously granted Variance for a UG16 manufacturing use which expired on June 10, 1980; the legalization of 180 square foot enlargement at the rear of the building; waiver of the rules. R-5 zoning district.
PREMISES AFFECTED – 93-08 95th Avenue, south side of 95th Avenue, Block 9036, Lot 3, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 1:30 P.M., for continued hearing.

91-10-BZ
APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.
SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.
PREMISES AFFECTED –123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik and David Shtesikman.

ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for continued hearing.

93-10-BZ
APPLICANT – Harold Weinberg, P.E. for Paul Grosman, owner; Willamsburg Charter School, lessee.
SUBJECT – Application May 25, 2010 – Variance (§72-21) to convert the ground floor of a community facility (*Williamsburg Charter School*) from parking to school use, contrary to floor area regulations (§43-122).
PREMISES AFFECTED – 198 Varet Street, south side 170'6" west of White Street, between White Street and Bushwick Avenue. Block 3117, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Harold Weimberg, Frank Sellitto, Ralph Perez, Ann Beachamp and Paul Grosman.
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 August 17, 2010, at 1:30 P.M., for decision, hearing closed.

98-10-BZ
APPLICANT – Stuart A. Klein, Esq., for Geriann Tepedino, owner.
SUBJECT – Application June 1, 2010 – Special Permit (§73-621) to allow a rooftop addition to an existing five-story, mixed-use building, contrary to §111-111. Tribeca Mixed-Use Special District/M1-5 zoning district.
PREMISES AFFECTED – 44 Lispenard Street, between Church Street and Broadway, Block 194, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Jay Goldstein.
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 August 24, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.