
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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DOCKET

New Case Filed Up to February 9, 2010

19-10-BZ

100 Oak Point Avenue, south of the Bruckner Expressway, west of Barry Street and Oak Point Avenue., Block 2604, Lot(s) 174, Borough of **Bronx, Community Board: 2.** (Special Permit 73-482) to permit accessory group parking facility. M3-1 district.

20-10-BZ

1470 Third Avenue, North west corner of East 83rd Street & Third Avenue., Block 1512, Lot(s) 33, Borough of **Manhattan, Community Board: 8.** Special Permit (73-36) to allow the operation of a physical culture establishment. C1-9 district.

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

CALENDAR

MARCH 2, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 2, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

224-07-BZ thru 226-07-BZ

APPLICANT – NYC Board of Standards and Appeals
OWNER: Marvin Welz
SUBJECT – Application for dismissal for lack of prosecution.
PREMISES AFFECTED – 1940/1942/1946 54th Street, south side of 54th Street, between 19th and 20th Avenue, Block 5495, Lot 48, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

303-09-BZY

APPLICANT – Ray Chen, for 517 53rd Street Inc, owner.
SUBJECT – Application October 30, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced prior to the text amendment of September 30, 2009. C4-3 zoning district
PREMISES AFFECTED – 517 53rd Street, between 5th and 6th Avenue, Block 608, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #7BK

334-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Gregory Pfeifer, lessee.
SUBJECT – Application December 30, 2009 – Reconstruction and enlargement of a single family home not fronting on a mapped street contrary to General City Law Section 36. Upgrade of private disposal system in the bed of a service road contrary to Department of Buildings Policy. R4 zoning district.
PREMISES AFFECTED – 132 Ocean Avenue, west side Ocean Avenue, 110' south mapped 8th Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

MARCH 2, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 2, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

239-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for YHA New York Inc., owner.
SUBJECT – Application October 24, 2007 – Variance (§72-21) to permit a Use Group 4 community youth center in the cellar and a portion of the first floor in a proposed three-story and penthouse mixed-use building. The proposal is contrary to ZR §24-35 (side yard). R5 district.
PREMISES AFFECTED – 57-38 Waldron Street, south side of Waldron Street, 43.71' west of 108th Street, east of Otis Avenue, Block 1959, Lot 27, Borough of Queens.
COMMUNITY BOARD #4Q

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 (ZR §72-21) to allow for a seven story mixed use building contrary to use regulations. (ZR §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

282-09-BZ

APPLICANT – Steven Williams, P.E., for KC&V Realty, LLC, owner; Richard Ortiz, lessee.
SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Ritchie's Gym*) on the third floor of a four-story commercial building. C4-3 zoning district.
PREMISES AFFECTED – 54-19 Myrtle Avenue, northeast corner of Myrtle Avenue, intersection of Palmetto Street and Myrtle Avenue, Block 3445, Lot 9, Borough of Queens.
COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 9, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudical Academy, owner.

SUBJECT – Application November 24, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story school and synagogue (UG 3 & 4) which expired on November 12, 2006. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a five-story school and synagogue; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, Community Board 12, Brooklyn, states that it has no objection to this application; and

WHEREAS, the site is located on the southeast corner of the intersection of Clara Street and 36th Street, within a C2-3 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story school building and synagogue (Use Groups 3 and 4); and

WHEREAS, substantial construction was to be completed by November 12, 2006, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

WHEREAS, thus, the applicant requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board inquired about the current use of the site; and

WHEREAS, in response, the applicant stated that the existing building has recently been vacated and the synagogue is now prepared to demolish the existing building in anticipation of construction; and

WHEREAS, additionally, the Board asked the applicant to confirm whether the programmatic needs and building requirements have changed in the intervening years; and

WHEREAS, the applicant represents that the synagogue's needs remain as originally presented and the plans to accommodate those needs are unchanged; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 12, 2002, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on February 9, 2014; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by February 9, 2014;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

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

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. 301234251)

Adopted by the Board of Standards and Appeals February 9, 2010.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application November 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on January 28, 2010. C1-2/R3X zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

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COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, the site is located on the northwest corner of the intersection at Richmond Avenue and Victory Boulevard, within a C1-2 (R3X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1970 when, under BSA Cal. No. 141-69-BZ, the Board granted a variance authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, on December 10, 2002, under the subject calendar number, the variance was reinstated to permit the legalization of the existing automotive service station for a term of ten years from the date of the grant, to expire December 10, 2012; a condition of the grant was that a new certificate of occupancy be obtained by December 10, 2006; and

WHEREAS, on January 13, 2009, the Board granted an extension of time to obtain a certificate of occupancy and amended the grant to permit the conversion of a portion of the service building to an accessory convenience store, and to permit other minor site modifications; and

WHEREAS, most recently, on July 28, 2009, the Board granted an extension of time to obtain a certificate of occupancy, to expire on January 28, 2010; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 9, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved

plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 9, 2011;

THAT all signage shall comply with C1 zoning district regulations;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

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

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. 510027515)

Adopted by the Board of Standards and Appeals February 9, 2010.

265-08-BZ

APPLICANT – Richard Bass, Herrick, Feinstein, LLP, for 70 Wyckoff LLC, owner.

SUBJECT – Application December 8, 2009 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on December 23, 2009. M1-1 zoning district.

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

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a four-story residential building; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in *The City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning

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district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to legalize the residential conversion of an existing four-story manufacturing building; a condition of the grant was that a new certificate of occupancy be obtained by December 23, 2009; and

WHEREAS, the applicant now seeks an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that delays resulting from the need to resolve Department of Buildings (“DOB”) objections, obtain permits to implement DOB requirements, and to complete the required physical changes prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to August 9, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by August 9, 2011;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

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

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. 310199969)

Adopted by the Board of Standards and Appeals February 9, 2010.

74-49-BZ

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

SUBJECT – Application January 19, 2010 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on September 17, 2009; Waiver of the Rules. M1-6 (Garment Center) zoning district.

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 15, 2010 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on February 12, 2010. C2-2/R6-B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

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 March 2, 2010, at 10 A.M., for decision, hearing closed.

369-03-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 99-01 Queens Boulevard LLC, owner; TSI Rego Park LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application December 3, 2009 – Amendment to a variance (§72-21) for a physical culture establishment (*New York Sports Club*) to change in the owner/operator, decrease floor area, modify days and hours of operation, and eliminate parking condition. C1-2/R7-1 zoning district.

PREMISES AFFECTED – 99-01 Queens Boulevard, Northwest corner of Queens Boulevard and 67th Street, Block 2118, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for continued hearing.

78-05-BZ

APPLICANT – Sheldon Lobel, P.C., for Young Israel of New York Hyde Park, owner.

SUBJECT – Application January 25, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for proposed expansion of an existing synagogue which expired on September 20, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 264-15 77th Avenue, southwest corner of 265th Street and 77th Avenue, Block 8538, Lot 29

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and 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 10 A.M., for decision, hearing closed.

DISMISSAL CALENDAR

255-08-BZ & 256-08-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER: Moustafa Gouda

SUBJECT – Dismissal for lack of prosecution of an application for a variance to allow residential buildings, contrary to lot area regulations. R7-2 zoning district.

PREMISES AFFECTED – 1994-1996 Madison Avenue, west side of Madison Avenue between East 127th and East 128th Streets, Block 1752, Lot 16, 116, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage and Gouranga Kundu.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 9, 2010.

APPEALS CALENDAR

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code.

PREMISES AFFECTED – 363 Lafayette Street, (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, February 9, 2010.

257-09-BZY thru 258-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

PREMISES AFFECTED – 88-36 & 88-38 144th Street, 86.63' from corner of 88th Road and 144th Street, Block 9683, Lot 15 & 16, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a three-story residential building currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 9, 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, the subject site is located on the west side of 144th Street, between 88th Road and 89th Avenue, in an R5 zoning district; and

WHEREAS, the subject site has approximately 36'-8" of frontage along 144th Street and a depth of approximately 103'-0"; and

WHEREAS, the site is proposed to be developed with a three-story residential building (the "Building"); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R5; and

WHEREAS, on May 15, 2007, New Building Permit Nos. 402531079-01-NB and 402531060-01-NB (hereinafter,

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the “New Building Permits”) were issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

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

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

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

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the

relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated January 21, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

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

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

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits and until September 10, 2009, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the footings and foundation; 100 percent of the shoring; 100 percent of excavation and backfill; and 100 percent of the drywell and detention tank; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permits; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

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

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$35,998, or approximately 12 percent of the \$311,998 cost to complete; and

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

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402531079-01-NB and 402531060-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on February 9, 2012.

Adopted by the Board of Standards and Appeals, February 9, 2010.

259-09-BZY thru 261-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 139-48 88th Road, 88-30 144th Street and 88-34 144th Street, corner of 88th Road and 144th Street, Block 9683, Lot 13 & 14, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a three-story residential building currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on December 8, 2009, after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 9, 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, the subject site is located on the southeast corner of 144th Street and 88th Road, in an R5 zoning district; and

WHEREAS, the subject site has approximately 86’-8” of frontage along 144th Street and a depth of approximately 42’-3”;

WHEREAS, the site is proposed to be developed with a three-story residential building (the “Building”); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R5; and

WHEREAS, on May 11, 2007, May 14, 2007 and May 15, 2007, New Building Permit Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB (hereinafter, the “New Building Permits”) were issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

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

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

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

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

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

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two

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terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

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

WHEREAS, by letter dated January 21, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the two-year term for construction; and

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

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

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits and until September 10, 2009, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the footings and foundation;

100 percent of the shoring; 100 percent of excavation and backfill; and 100 percent of the drywell and detention tank; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permits; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before September 10, 2009; and

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

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$54,000, or approximately 14 percent of the \$375,000 cost to complete; and

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

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402531042-01-NB, 402531051-01-NB and 402531033-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on February 9, 2012.

Adopted by the Board of Standards and Appeals, February 9, 2010.

265-09-A

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

SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street, contrary to General City

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Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 165 Ocean Avenue, east side of Ocean Avenue, 130’ south of Oceanside Avenue, Block 16350, Lot 400, 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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420046854, reads in pertinent part:

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

A2– The proposed upgraded private disposal system is in the bed of a mapped street contrary to Department of Buildings policy;”
and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to continued hearing on February 2, 2010 with closure and decision on the same date; and

WHEREAS, by letter dated February 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 October 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 19, 2009, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 9, 2009, acting on Department of Buildings Application No. 420046854, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 21, 2010”– one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 9, 2010.

300-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Seanna & John Tobin, lessees.

SUBJECT – Application October 29, 2009 – Reconstruction and enlargement of an existing single family dwelling and upgrade of an existing non conforming private disposal system located in the bed of a mapped street, contrary to General City Law Section 35 and Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 635 Highland Place, east side Highland Place, partially in the bed of mapped Beach 202nd Street, Block 16350, Lot p/o300, 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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 22, 2009, acting on Department of Buildings Application No. 420078659, 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

A-2 – 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 February 9, 2010, after due notice by publication in the *City Record*, with closure and decision on the same date;

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and

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated December 1, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 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 October 22, 2009, acting on Department of Buildings Application No. 420078659, 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 February 9, 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, February 9, 2010.

310-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Lorraine & Terence Crossan, lessees.

SUBJECT – Application November 23, 2009 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street, contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 14 State Road, north side of Rockaway Point Boulevard, Block 16350, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on

condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 18, 2009, acting on Department of Buildings Application No. 420059796, 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

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in the *City Record*, with closure and decision on the same date; and

WHEREAS, by letter dated December 10, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated December 9, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 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 November 18, 2009, acting on Department of Buildings Application No. 420059796, 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 November 23, 2009" – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT 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, February 9, 2010.

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REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 9, 2010
1:30 P.M.

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.
SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

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 February 23, 2010, at 10 A.M., for decision, hearing closed.

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: Marvin Mitzner.

For Opposition: Harvey Epstein.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

ZONING CALENDAR

195-07-BZ

CEQR #08-BSA-011M

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Minor.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 29, 2009, acting on Department of Buildings Application No. 104557221, reads in pertinent part:

“ZR 42-14(D)(2)(B) & (3)(B). Proposed UG 5 & 6 uses below level of second story (i.e. 1st floor & 2 cellar levels) are not permitted in M1-5B ZD;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, with continued hearings on October 6, 2009, and October 27, 2009, and then to decision on February 9, 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 2, Manhattan, recommends approval of the application, with the following

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conditions: (1) the second floor courtyard be a primarily planted area not to be used for food and drink service; (2) the physical culture establishment in the cellar not obtain a liquor license; (3) the roof space not obtain a liquor license and not be used for food or beverage service; and (4) no amplified music be located in exterior spaces; and

WHEREAS, the site is located on the northwest corner of the intersection of Bond Street and Lafayette Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site has 60'-3½" of frontage along Bond Street, 100'-6¼" of frontage along Lafayette Street, and a total lot area of 6,471 sq. ft.; and

WHEREAS, the site is occupied by a two-story and mezzanine building, a one-story structure formerly used as an automotive service station, parking, and an advertising sign, all of which will be demolished or replaced; and

WHEREAS, the proposed building will have a floor area of 31,910 sq. ft. (4.93 FAR), an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69'-2", and a total height of 80'-3"; and

WHEREAS, the proposal provides for the following uses: (1) a spa/fitness center and accessory meeting rooms to the hotel use at the sub-cellar level; (2) accessory storage, laundry, offices, and mechanical use at the cellar level; (3) an eating and drinking establishment without entertainment (Use Group 6C) and a hotel lobby at the first floor; (4) a hotel lounge and rooms at the second floor; (5) hotel rooms at the third through sixth floors; and (6) a mechanical room and hotel rooms at the seventh floor; and

WHEREAS, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, the applicant states that the proposed Use Group 5 hotel use is permitted as-of-right at and above the level of the second floor, but that the subject variance is required for the proposed hotel and retail uses below the second floor, which are prohibited pursuant to ZR § 42-14; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) poor subsurface soil conditions; (2) the site is adjacent to the Lexington Avenue subway line; and (3) the historic use of the site as an automotive service station has resulted in soil contamination; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant (the "Subsurface Report") stating that excavation on the site to a depth of 20 feet will be necessary because soil borings indicate the presence of uncontrolled fill and loose sand to that depth throughout much of the site; and

WHEREAS, the applicant represents that even if the owner constructed a building with only one cellar, it would still have to remove the unstable material below the single cellar level from 12 to 20 feet below grade in order to provide a sound subsurface base for the mat foundation; and

WHEREAS, the applicant represents that since the site must be excavated to a depth of 20 feet even for a single cellar level, it is prudent to complete the small amount of additional excavation necessary to provide a sub-cellar level and recoup some of the foundation costs through the additional floor space; and

WHEREAS, according to the Subsurface Report, excavating to a depth of 20 feet necessitates additional removal of fill and sand in the excavation, the installation of deep underpinning to carry the loads of several adjacent buildings, and an excavation support system to brace the adjacent subway; and

WHEREAS, as to the adjacency to the subway, the applicant represents that the eastern boundary of the site coincides with the Lexington Avenue subway line below grade; and

WHEREAS, accordingly, the applicant states that the New York City Transit Authority ("NYCTA") has requirements for the design and construction of an excavation support system at this location; and

WHEREAS, specifically, the applicant states that a raker and waler system will have to be installed along with shoring to brace the adjacent subway in accordance with NYCTA design and performance guidelines; and

WHEREAS, additionally, the applicant represents that the NYCTA requires monitoring of the tunnel structure during foundation construction; and

WHEREAS, the Subsurface Report supports these assertions and documents the anticipated expenses of the noted supplemental measures; and

WHEREAS, as to the soil contamination, the applicant represents that remedial work will be required due to the industrial character of the historic uses on the lot; and

WHEREAS, the applicant states that three underground storage tanks associated with the former automotive service station located on the site were legally closed in 2006, and that the results of testing that was performed at that time confirmed the presence of elevated mercury and semi-volatile organic compound levels in the soil on the site; and

WHEREAS, the applicant submitted an environmental report and cost estimates documenting the expected testing and remediation of the soil, including the potential inclusion of a vapor barrier, due to its historic use as an automotive service station; and

WHEREAS, based upon the above, 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 conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed: (1) an as-of-right office development; (2) an as-of-right hotel development; and (3) the proposed hotel development; and

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WHEREAS, the applicant concluded that the as-of-right scenarios would not result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed hotel building would realize a reasonable return and has submitted evidence in support of that assertion; and

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

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

WHEREAS, as to bulk, the applicant notes that the proposed 4.93 FAR complies with the maximum 5.0 FAR permitted for an as-of-right hotel building in the subject zoning district, and that no bulk waivers are requested; and

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

WHEREAS, the applicant notes that the proposed hotel use is permitted as-of-right at and above the second floor and that the subject variance is only necessary for the proposed hotel and retail uses located below the second floor; and

WHEREAS, the applicant states that the proposed hotel use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram, showing the various uses in the immediate vicinity of the site; and

WHEREAS, specifically, the radius diagram showed that there are 13 eating and drinking establishments in the immediate vicinity of the site, including a restaurant located adjacent to the site, at 6 Bond Street, and a restaurant located one block from the site, at 9 Great Jones Street; and

WHEREAS, the radius diagram also reflects that there are several physical culture establishments in the vicinity of the site, including the Great Jones Spa located one block from the site; and

WHEREAS, as noted above, the applicant represents that the proposed spa/fitness center at the sub-cellar level will initially be an amenity only for hotel guests, but that it will eventually be made available to the public through a separate entrance on Lafayette Street, at which point an application will be made pursuant to ZR § 73-36 to operate a physical culture establishment on the site; and

WHEREAS, as to the Community Board's requested conditions, the applicant provided revised plans showing a landscaped area at the northwest portion of the second floor, and states that the operator will consider limiting the hours of operation and the activities of the outdoor seating area; and

WHEREAS, the Board notes that the applicant must comply with all relevant provisions of the Noise Code; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of Use Group 5 and 6 uses below the second floor will not impact nearby conforming uses; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated December 7, 2009; and

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

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

WHEREAS, the applicant asserts that the request to include uses which would be permitted above the first floor of the building on the first floor and below without any other waivers is the minimum variance; and

WHEREAS, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA011M dated February 5, 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; 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, the EAS determined that there could be potential hazardous materials impacts during construction and occupancy of the proposed hotel due to historical land uses; and

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

WHEREAS, the applicant has submitted a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan ("Sampling Protocol"), which has been approved by DEP, and the applicant proposes to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if such hazardous materials are found, to submit a hazardous materials remediation plan, including a

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health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") upon the occurrence of the following: (i) applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project, or (B) a Notice to Proceed ("Notice to Proceed") in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) for grading, excavation, foundation, alteration, building or other permit which permits soil disturbance or construction of the superstructure for the project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; 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 Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District, the construction of a seven-story 50-room hotel building with hotel and retail uses below the level of the second floor, which is contrary to ZR § 42-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 21, 2010"--ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the

proposed building: seven stories, a maximum floor area of 31,910 sq. ft. (4.93 FAR), with an additional 15,259 sq. ft. of floor space located at the cellar and sub-cellar levels, a wall height of 69'-2", and a total height of 80'-3";

THAT prior to the issuance of any building permit by DOB for the proposed project that would result in grading, excavation, foundation, alteration, building or other permit which permits soil disturbance, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection or a Notice to Proceed, and in the event a Notice to Proceed is obtained, a Notice of Satisfaction, and shall comply with all DEP requirements to obtain such notices;

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

THAT the use of the site shall comply with all relevant provisions of the Noise Code;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, February 9, 2010.

235-09-BZ

CEQR #10-BSA-012Q

APPLICANT – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (*Calvary Baptist Church*). Proposal is contrary to floor area and open space (§23-144), number of dwelling units (§23-221), height and setback (§23-631), side yards (§23-462 (a)), and parking (§25-23). R3-2 zoning district.

PREMISES AFFECTED – 162-25 112th Road, Guy Brewer Boulevard and 112th Road, Block 12183, Lot 35 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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THE RESOLUTION –

WHEREAS, decisions of the Queens Borough Commissioner, dated January 22, 2010, acting on Department of Buildings Application No. 420026670, reads in pertinent part:

- “1. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the floor area ratio and open space ratio permitted by section ZR 23-144.
2. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the max. number of dwelling units permitted by sect. 23-221.
3. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the maximum aggregate width of walls on one side permitted by sect. ZR 23-463.
4. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district exceeds the height and setback permitted by sect. ZR 23-631.
5. Proposed 5 story Grandparent (housing for the elderly) building in an R3-2 zoning district does not provide the amount of parking required by sect. ZR 25-25;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, a proposed five-story non-profit residence for the elderly which does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”), number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in the *City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, this application is brought on behalf of the Calvary Baptist Church of Jamaica (the “Church”), a not-for-profit religious entity; and

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

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, New York City Council Member Thomas White, Jr. provided testimony in support of this application; and

WHEREAS, New York City Council Member Leroy Comrie provided testimony in support of this application; and

WHEREAS, New York State Senator Shirley L. Huntley provided testimony in support of this application; and

WHEREAS, New York State Senator Malcolm A. Smith provided testimony in support of this application; and

WHEREAS, the subject site is located on the northwest corner of 112th Road and Guy R. Brewer Boulevard, within an R3-2 zoning district; and

WHEREAS, the subject lot is irregularly shaped with 226 feet of frontage along Guy R. Brewer Boulevard, 95 feet of frontage along 112th Road, and a total lot area of approximately 25,732 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant notes that there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; as proposed, the rezoning would reduce the degree of the requested waivers, as discussed in more detail below; and

WHEREAS, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59’-8”, and which required additional waivers for front and side yards; and

WHEREAS, the applicant now proposes to construct a five-story 58-unit building with the following non-complying parameters: a floor area of 60,183 sq. ft. (24,445 sq. ft. is the maximum permitted); an FAR of 2.34 (the maximum permitted FAR is 0.95); an OSR of 23 percent (the minimum required OSR is 66.5 percent); 58 dwelling units (36 is the maximum permitted); a total height of 50’-0” (35’-0” is the maximum permitted); an aggregate wall width of 176’-5” along Guy Brewer Boulevard (125’-0” is the maximum permitted); and 16 parking spaces (20 is the minimum required); and

WHEREAS, the applicant states that the proposed building will be occupied by: (1) a lobby, support and social services rooms, a superintendent’s apartment, and five units on the first floor; (2) 13 units on the second through fifth floors; and (3) storage, a boiler room, and mechanical space in the cellar; and

WHEREAS, the applicant states that the following is a unique physical condition which creates an unnecessary hardship in developing the site in compliance with applicable regulations: the site’s subsurface soil contamination; and

WHEREAS, the applicant states that three 550 gallon underground storage tanks are located on the site; and

WHEREAS, the applicant submitted a report from an environmental consultant stating that, based on soil borings taken at the site, gasoline and fuel oil impacts were identified adjacent to the underground storage tanks; and

WHEREAS, the applicant submitted a financial analysis indicating that the cost to remove the underground storage tanks and approximately 750 yards of contaminated soil is \$207,450; and

WHEREAS, the applicant states that, in order to reduce the costs of construction and to offset the remediation costs, the Church is only constructing a small cellar for storage, the boiler room and related mechanical equipment; and

WHEREAS, however, the applicant notes that the cellar level is essential to the development of a non-profit residence for the elderly because it houses many of the required services and ancillary uses; and

WHEREAS, accordingly, because it is cost prohibitive to provide a cellar, a number of service related uses necessary for the operation of the non-profit residence for the elderly, which could otherwise be located underground and would not contribute to the floor area, must be accommodated on the first

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floor, thereby increasing the degree of non-compliance with floor area and height requirements; and

WHEREAS, additionally, the applicant states that the proposed waivers are necessary to construct a facility that meets the Church's programmatic needs of providing affordable and supportive housing for grandparents and older adults who are the sole caregivers to minors, and providing on-site social service programs to the residents; and

WHEREAS, the applicant represents that the proposed facility qualifies as a non-profit residence for the elderly pursuant to the definition set forth in ZR § 12-10; and

WHEREAS, specifically, the proposal satisfies the ZR § 12-10 criteria for a non-profit residence for the elderly in the following ways: (1) the building will have a minimum of 90 percent occupancy by elderly families, the head or spouse of which is 62 years of age or over, or by single elderly persons who are sixty-two years of age or over; (2) it will contain non-housekeeping units especially designed for elderly persons or families; (3) it consists of one building which contains related accessory social and welfare facilities, primarily for residents, which will also be made available to the community, including community rooms, workshops and other essential service facilities, and that these facilities will occupy approximately seven percent of the total proposed floor area of the building; and (4) it will be constructed with the assistance of mortgage financing procured through the New York State Division of Housing and Community Renewal and will be maintained on a non-profit basis by Calvary Baptist Grandparent Housing, a wholly owned subsidiary of the Church; and

WHEREAS, the applicant states that the proposed development will allow the Church to increase the number of grandparents who are the sole caregivers to minors that can be served in the surrounding area and provide residents with a modern, functional facility; and

WHEREAS, the applicant represents that nearly 20 percent of young children in Queens are being raised by their grandparents, many of whom are elderly individuals on a fixed income; and

WHEREAS, the applicant further represents that in buildings where senior housing is available children are often prohibited, and that buildings that accept children often are not equipped to meet the needs of the elderly, leaving few practical options for inter-generational housing; and

WHEREAS, the applicant states that the proposed building will help to overcome the shortage of facilities for inter-generational housing by providing a non-profit residence for the elderly which is specifically oriented towards households where a minor is being cared for by a grandparent; and

WHEREAS, the applicant states that the supportive and social services conducted in the allocated space on the first floor will include parenting classes, respite care, counseling and support groups, summer programs for children, educational workshops, after-school tutoring, stress reduction and exercise classes, and referral of medical

and legal services; and

WHEREAS, the applicant represents that the funding for the project will derive from the New York State Division of Housing and Community Renewal's allocation of Tax Credits and Housing Trust Fund, which will provide the necessary funding for 80 percent of the project; and

WHEREAS, the applicant further represents that it will receive funding from the New York State Housing Finance Agency ("HFA") in anticipation of the development of the facility; and

WHEREAS, by letter dated May 1, 2009, HFA stated that the proposed development is eligible for tax exempt bond and four percent "as of right" tax credit financing for 57 units which will be affordable to households with incomes at or below 30 percent of Area Median Income and where a minor is being cared for by a grandparent; and

WHEREAS, the applicant represents that if the requested variance is not granted, the financial assistance from HFA may not be available, thereby preventing the construction of the proposed building; and

WHEREAS, the applicant represents that the proposed 57 units are necessary to generate sufficient income to fund the operating costs of both the residential component of the project as well as the social services space; and

WHEREAS, in support of this statement, the applicant submitted a report from the project's sponsor stating that the proposed 57 units are necessary to allow for a debt coverage ratio of 1.16 percent, which is acceptable for the agency that will be underwriting the tax exempt bonds that will finance the project; and

WHEREAS, the applicant states that the proposed parking waiver is necessary because providing the required 20 parking spaces would prevent the construction of a floor plate large enough to accommodate sufficient floor area to satisfy the Church's programmatic needs and to make the project financially feasible; and

WHEREAS, the applicant represents that the proposed 16 parking spaces will provide ample parking for the proposed building because many of the residents of a non-profit residence for the elderly do not own automobiles or generate any vehicular or transit trips; and

WHEREAS, the applicant states that the proposed aggregate width of walls waiver is necessary in order to minimize the height waiver required by the proposed building; and

WHEREAS, the applicant represents that complying with the aggregate width of walls requirement would necessitate constructing a significantly taller building in order to satisfy the Church's programmatic needs; and

WHEREAS, the applicant further represents that the surrounding neighborhood is characterized by two- and three-story homes spread amongst five- and six-story developments, and that a waiver of the aggregate width of walls requirement enables the Church to provide a building which is more in keeping with the character of the neighborhood than a taller, narrower structure; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate

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and in conjunction with the programmatic needs of the Church, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

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

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

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted an aerial study reflecting that Guy R. Brewer Boulevard is characterized by a series of two- and three-story homes spread amongst taller five- and six-story developments; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an R5 zoning district one block north of the subject site, where a four- and six-story senior residence is located; and

WHEREAS, the applicant states that there is also an R6 zoning district located approximately two blocks southeast of the subject site, where two eight-story residential buildings are located; and

WHEREAS, as noted above, there is an active study at the Department of City Planning which is considering a rezoning of the surrounding area, including the subject site, to an R5B district; and

WHEREAS, the applicant submitted a zoning analysis comparison chart reflecting that a rezoning of the site to an R5B district would eliminate the need for the waivers related to the number of dwelling units and the aggregate width of walls, and would significantly reduce the degree of the FAR, OSR, height and parking waivers; and

WHEREAS, specifically, the zoning analysis comparison chart indicates that under the proposed R5B district, the maximum permitted number of dwelling units would increase from 36 to 66, the maximum permitted floor area would increase from 24,445 sq. ft. (0.95 FAR) to 50,177 sq. ft. (1.95 FAR), the minimum required OSR would decrease from 66.5 percent to 23.1 percent, the maximum permitted total height would increase from 35 feet to 40 feet, the minimum required number of parking spaces would decrease from 20 to 18, and there would be no maximum aggregate wall width requirement; 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 a result of the unique site conditions and the Church's programmatic needs; and

WHEREAS, as noted above, the applicant originally proposed a six-story, 67-unit building with a floor area of 79,999 sq. ft. (3.11 FAR), an OSR of 14.5 percent, a total height of 59'-8", and which required additional waivers for front and side yards; and

WHEREAS, the Board finds that the revised proposal, which reduced the waivers for FAR, OSR, number of dwelling units and height, and eliminated the waivers for front and side yards, is the minimum necessary to afford the owner relief; and

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

WHEREAS, on May 7, 2009, the applicant's consultant identified petroleum-impacted soil surrounding the three out-of-service 550 gallon underground petroleum storage tanks on the subject property; and

WHEREAS, based on that identified soil contamination, the applicant's consultant notified the New York State Department of Environmental Conservation ("DEC") and DEC assigned Spill Number 09-01810 to the subject property; and

WHEREAS, in order to address DEC's requirements and to bring the subject property back into regulatory compliance, the consultant prepared and submitted to DEC a Proposed Subsurface Investigation and Remedial Action Work Plan ("RAWP") dated July 20, 2009, and submitted a detailed proposal to DEC for the proper removal of the underground storage tanks; and

WHEREAS, DEC approved the Proposed Subsurface Investigation and RAWP in a November 17, 2009 letter to the applicant and requested that a detailed Remedial Investigation Report be submitted after the RAWP activities were completed; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR; 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. 10BSA132Q, dated December 22, 2009; 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, prepared in accordance with Article 8 of the New York State Environmental

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Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R3-2 zoning district, a five-story 58-unit non-profit residence for the elderly which does not comply with zoning regulations for FAR, OSR, number of dwelling units, aggregate width of walls, height and parking, and is contrary to ZR §§ 23-144, 23-221, 23-463, 23-631, and 25-25, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 27, 2010"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 60,183 sq. ft.; a maximum FAR of 2.34; an open space ratio of approximately 23 percent; a total height of 50 feet; a side yard with a width of 8'-2 1/2" along the western lot line; a side yard with a width of 21'-6" along the northern lot line; a front yard with a depth of 10'-0" along the eastern lot line; a front yard with a depth of 15'-0" along the southern lot line; two rear yards with depths of 67'-3" and 75'-6", respectively; 58 dwelling units; and 16 parking spaces, as reflected on the BSA-approved plans;

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, February 9, 2010.

239-09-BZ

CEQR #10-BSA-014M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a six-story community facility building (*NYU Center for Academic and Spiritual Life*), contrary to lot coverage (§24-11) and height and setback regulations (§§24-522, 33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street, aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Elise Wagner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 5, 2009, acting on Department of Buildings Application No. 120107678, reads, in pertinent part:

1. Proposed building does not comply with lot coverage regulations of Zoning Resolution Section 24-11 in the R7-2 district;
2. Proposed building does not comply with height and setback regulations of Zoning Resolution sections 24-522 and 33-431 in the R7-2 and C1-5/R7-2 districts.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a portion of a site within R7-2 and C1-5(R7-2) zoning districts, the proposed construction of a six-story Use Groups 3 and 4 building, to serve as New York University’s Center for Academic and Spiritual Life, which does not comply with applicable zoning requirements for lot coverage and height and setback, contrary to ZR §§ 24-11, 24-522, and 33-431; and

WHEREAS, a public hearing was held on this application on January 12, 2010, after due notice by publication in the *City Record*, and then to decision on February 9, 2010; and

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

WHEREAS, Community Board 2, Manhattan, states that it recognizes that the as of right building envelope will not accommodate the applicant’s programmatic need, but indicates that it is not satisfied with the aesthetics of the proposed building (the “Building”) and, therefore, recommends that the Board disapprove of the application; and

WHEREAS, the Greenwich Village Society for Historic Preservation (GVSHP) submitted testimony in opposition to the proposal, citing concerns about (1) the absence of setbacks on Thompson Street and West Third Street; (2) the effects of shadows on Judson Memorial Church; (3) the overall scale; and (4) NYU’s purported failure to establish its programmatic needs; and

WHEREAS, a representative of Judson Memorial Church provided testimony citing concerns about the impact of shadows on the church; and

WHEREAS, the Greenwich Village Block Associations provided written testimony in opposition to the Building, citing concerns about the Building’s massing, potential shadows, and incompatibility with neighborhood character; and

WHEREAS, certain community members provided testimony in opposition to the Building, echoing the concerns of the GVSHP and Greenwich Village Block Associations

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(collectively, the “Opposition”); and

WHEREAS, the concerns of the Opposition are discussed below; and

WHEREAS, this application was brought on behalf of New York University (NYU), a not for profit educational institution; and

WHEREAS, the subject zoning lot comprises two tax lots – Lot 40 on the eastern portion of the block and Lot 17 on the western portion of the block; and

WHEREAS, the zoning lot occupies the entire block bounded by Washington Square South, Thompson Street, West Third Street, and Laguardia Place; and

WHEREAS, the zoning lot has a lot area of 36,205 sq. ft. and is partially within an R7-2 zoning district and partially within a C1-5(R7-2) overlay; and

WHEREAS, the eastern portion of the zoning lot (Lot 40) is occupied by NYU’s 11-story Kimmel Center for University Life and the western portion of the zoning lot is vacant (the “Development Site”), and will be occupied by the Building; and

WHEREAS, the Development Site has 209.48 feet of frontage on Thompson Street, 50.02 feet of frontage on Washington Square South, and 75.06 feet of frontage on West Third Street, for a total lot area of 12,650 sq. ft.; and

WHEREAS, the Development Site is located in an R7-2 zoning district and the southern portion of the lot, located within 100 feet of West 3rd Street, is located within a C1-5 commercial overlay; and

WHEREAS, the Kimmel Center, which is as of right, and the Building are viewed together for zoning purposes; however, all requested waivers are associated with the Development Site and only the zoning parameters of the Building are reviewed within the context of the subject variance request; and

WHEREAS, specifically, the Development Site is considered both a corner lot and an interior lot; and

WHEREAS, the corner lot portion of the Development Site, located within the C1-5 (R7-2) overlay is not subject to lot coverage regulations, but the maximum lot coverage for a community facility use is 70 percent on the corner lot portion within the R7-2 zoning district and 65 percent on an interior or through lot; the applicant notes that any portion of the Building up to a height of 23 feet may be excluded in calculating lot coverage compliance; and

WHEREAS, the height and setback regulations applicable to community facilities in R7-2 and C1-5(R7-2) zoning districts provide that the maximum height of a building’s front wall is 60 feet or six stories, whichever is less; on Washington Square South, Thompson Street, and West Third Street, which are narrow streets, an initial setback of 20 feet is required above such height and the building thereafter may be regulated by the sky exposure plane; and

WHEREAS, however, the applicant proposes full lot coverage and a streetwall height of approximately 88 feet, without a setback; the proposal complies with all other bulk parameters, including total height, and FAR, which is 4.9 on the Development Site or 5.83 across the entire zoning lot (6.5 FAR is the maximum permitted) comply with zoning district

regulations; and

WHEREAS, the applicant states that the requested waivers are necessary because the physical constraints of the Development Site, including its shallow irregular shape, and three street frontages, which require lot coverage and height and setback waivers, limit the floorplates and the program spaces above the first floor; and

WHEREAS, the applicant sets forth the following programmatic needs: (1) three large rooms with floor area of approximately 2,800 sq. ft., with flexible layouts to serve different school functions; (2) approximately 20 mid-size and large classrooms and meeting spaces, ranging from 500 to 1,500 sq. ft. and accommodating 25-120 persons each, to be located on the lower floors to facilitate traffic flow; (3) a separate floor dedicated to spiritual life needs, containing three of the mid-size to large meeting rooms; and (4) music rooms that are acoustically isolated; and

WHEREAS, additionally, the applicant identifies adjacency to Kimmel Center as an asset, to promote operational efficiencies in the form of centralized building services and the elimination of duplication of space such as food service and a catering kitchen, while also allowing students access between the buildings at each level; and

WHEREAS, the program of the Building is as follows: cellar and sub-cellar – mechanicals, classrooms, and auditorium space; first floor – house of worship (to be occupied by NYU’s Catholic Center/the Archdiocese of New York) and accessory uses; second and third floors – classrooms and offices; fourth floor – classrooms, offices, and meeting rooms; fifth floor colloquium and multi-purpose room; and sixth floor – mechanicals; and

WHEREAS, the applicant represents that the complying alternative would be a 72,566-sq. ft. 11-story building with an FAR of 6.12 across the zoning lot or 5.83 on just the Development Site; the complying building would have nine occupied stories and two mechanical floors above grade, with two cellar levels below grade, with a total height of approximately 163 feet; and

WHEREAS, the applicant represents that, in order to comply with lot coverage regulations, while maintaining the Washington Square South streetwall, the second and third floors would be set back 20 feet from Thompson Street; at the fourth through seventh floors, the building would be set back along all three frontages, in order to comply with height and setback regulations; and at each of the eighth, ninth, and tenth floors, the building would be further set back along these frontages to remain within the sky exposure plane; and

WHEREAS, the applicant asserts that the setbacks would result in increasingly smaller floorplates: 10,201 programmable sq. ft. on the first floor; 8,860 programmable sq. ft. on each of the second and third floors; 4,917 programmable sq. ft. on each of the fourth through seventh floors; 4,589 sq. ft. programmable sq. ft. on the eighth floor; and 3,353 programmable sq. ft. on the ninth floor; the sub-cellar through first floor levels would have the same layouts but the remainder of the building, affected by the setbacks, would be constrained; and

WHEREAS, specifically, the applicant represents that the

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complying building could only accommodate one colloquium and one multi-purpose room, thirty small classrooms, ten medium to large classrooms and meeting rooms, and 38 offices; the applicant represents that NYU has the greatest need for classrooms which accommodate more than the 10 to 12 people, which can occupy a small classroom; and

WHEREAS, additionally, the applicant states that the complying building without a uniform floorplate size and with a greater number of floors, would be inefficient in all aspects of circulation, including infrastructure and the movement of people through the space; and

WHEREAS, the proposed building, with floor-to-floor heights that match those of the Kimmel Center to allow for the required programmatic adjacencies between the two buildings, with a first floor height of 20'-4", second through fourth floor height of 14'-2", and a fifth floor height of 22'-6" to accommodate the large multi-purpose room and colloquium room, for a total height of 100'-2" at the top of the mechanical floor; and

WHEREAS, the applicant notes that, without setbacks, the Building, as proposed, is able to achieve a uniform floorplate of 10,600 programmable sq. ft.; and

WHEREAS, the applicant represents that with larger floorplates, NYU is able to accommodate its programmatic needs with (1) the required number of medium and large classrooms and meeting rooms on lower floors; (2) spiritual life uses, including clergy offices, meeting rooms, ablution rooms, and icon and ritual object storage, can be co-located on the fourth floor, thus fostering collaboration and allowing shared programming opportunities among different faiths; (3) the colloquium room with state of the art video conference equipment and of a sufficient size to hold classes, presentations, and meetings in conjunction with NYU's remote campus locations; and (4) the large multi-purpose room for religious worship, orchestra practice, an auditorium-like events space, and dining; and

WHEREAS, further, the applicant notes that the Building will benefit by its integration into the Kimmel Center on the second through fifth floors, including access to its double-height auditorium space on the fourth floor; and

WHEREAS, additionally, the applicant states that the Building will be significantly more efficient to construct and maintain due to the larger uniform floor plates and less area which must be devoted to the building's core and circulation areas in order to achieve the same amount of programmatic area; and

WHEREAS, the Board credits the applicant's statements as to NYU's programmatic needs and the limitations of a complying building; and

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

WHEREAS, in addition to these programmatic needs, the applicant notes that the Development Site is compromised by its narrow width and large amount of street frontage, which effectively constrains the area available for the Building's floor

plates, when lot coverage and setback regulations are applied; and

WHEREAS, based upon the above, the Board finds that NYU's programmatic cannot be accommodated on the subject site, thus creating unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since NYU is a not-for-profit organization and the proposed development will be in furtherance of its educational mission; and

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

WHEREAS, the applicant notes that the waivers will allow a taller street wall (approximately 88 feet as opposed to 60 feet), but that this allows for the programmatic need to be accommodated within a building with a lower overall height (100'-2" as opposed to approximately 163 feet) as would be permitted within the as of right building envelope subject to sky exposure plane restrictions; and

WHEREAS, the applicant represents that the proposed height is more compatible with the height of Judson Memorial Church, which is to the west across Thompson Street and rises to a height of 50 feet with a tower height of 105 feet; Vanderbilt Hall, with a height of 70 feet; and the King Juan Carlos I Center and other neighborhood buildings to the south of the site which have heights ranging from 40 to 70 feet; and

WHEREAS, the applicant notes that the Building is proposed to be shorter than NYU's Bobst Library across Laguardia Place at 151 feet and the adjacent Kimmel Center at approximately 160 feet and would thus serve as a transition between the taller institutional buildings to the east and the lower scale buildings to the west along Washington Square South; and

WHEREAS, the applicant proposes to clad the building's northern façade and a portion of the western façade with a cutout material around a glass curtain wall, suggesting a tree's branches, in a filigree motif in an effort to reduce visual impact and harmonize with surrounding conditions; and

WHEREAS, as to the southern façade along West Third Street, the applicant has designed a modified façade with varied texture, scale, and color, which is intended to reflect the lower scale non-institutional context along West Third Street; and

WHEREAS, the Board observes that the Building as proposed is more contextual with the surrounding built conditions than an as of right building with setbacks and an increased height; and

WHEREAS, as to the GVSHP's concern that a setback alternative may be more compatible with the surrounding area, the applicant performed massing studies and represents that the building's rectangular form and simple massing without setbacks is more in keeping with the form of many or the nearby buildings than would be a building with setbacks; and

WHEREAS, the applicant represents that setbacks do not

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relieve the concerns about the Building's massing or shadows and rather serve as a distraction from the uniform streetwall, which is the common building form found in the area; and

WHEREAS, in addition to exploring an alternative with a setback, the applicant considered an alternative in which the fifth floor would be clad completely in glass, the applicant determined that the glass level would actually draw more attention to the top of the building, particularly at night; and

WHEREAS, as to the Opposition's concerns about potential shadows, the applicant represents that it has determined that the shadows cast by the Building on the windows of Judson Memorial Church would be limited in extent and duration and would not cause significant adverse impact; and

WHEREAS, the applicant also notes that the submitted Environmental Assessment Statement ("EAS") concludes that the Building would cast less shadow on Washington Square Park and the church throughout the year than the complying building and that the Building will be compatible with the neighborhood and is not expected to create any adverse impacts; and

WHEREAS, the Board understands that the Opposition remains concerned, and notes that the applicant indicated it would continue to engage in a dialogue with the community about architectural design details; and

WHEREAS, however, the Board finds that such concerns do not relate to the requested waivers or application; and

WHEREAS, the applicant also notes that the Landmarks Preservation Commission reviewed the EAS and determined that there is no effect to historic resources; 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 existing buildings on the zoning lot and the programmatic needs of NYU; and

WHEREAS, as to the Opposition's concerns about whether the applicant has made all of the findings and whether the proposal represents the minimum variance, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the Building is designed to address NYU's present programmatic needs, which have been clearly established in the record; 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 a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA134M, dated February 5, 2010; and

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

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

WHEREAS, DEP approved the Remedial Action Plan and the Construction Health and Safety Plan on October 27, 2009; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; and

WHEREAS, based on the results of noise monitoring, the applicant proposes window-wall noise attenuation of 25 dBA on the north, west, and south facades of the proposed building; the proposed building design will include central air-conditioning (as an alternate means of ventilation) to ensure that an interior noise level of 45 dBA is achieved; 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 Type I Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a portion of a site within R7-2 and C1-5 (R7-2) zoning districts, the proposed construction of a six-story Use Groups 3 and 4 building, to serve as New York University's Center for Academic and Spiritual Life, which does not comply with applicable zoning requirements for lot coverage, height, and setback, contrary to ZR §§ 24-11, 24-522, and 33-431; *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 December 21, 2009"- fifteen (15) sheets; and *on further condition*:

THAT the Building parameters shall not exceed those reflected on the BSA-approved plans for the Development Site or the zoning lot, including a maximum floor area of 61,373 sq. ft. for the Building, a maximum streetwall as shown, and a maximum total height for the Building of 100'-2";

THAT any change in the use, occupancy, or operator of

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the Building requires review and approval by the Board;

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

THAT 25 dBA of window-wall noise attenuation shall be provided on the north, west, and south facades of the proposed building and central air-conditioning shall be maintained as an alternate means of ventilation;

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, February 9, 2010.

214-07-BZ

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

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

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

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

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 March 2, 2010, at 1:30 P.M., for continued hearing.

220-08-BZ

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

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district. PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for adjourned hearing.

254-08-BZ

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

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district. PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

302-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance (§72-21) to permit an existing semi-detached residential building, contrary to side yard regulations (§23-462) R5 district.

PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

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For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Ashwin Verma.

For Opposition: Craig Hammerman, CB #6, Jim Vogel, Michael Curtin and Abigail Banker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 1:30 P.M., for decision, hearing closed.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug and Hiram Rothkrug.

For Opposition: John A. Fratta, Anjali Kochar, Frank Tirabasso, Joseph A. McManus, Sal Castorine and Joey Thompson.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

270-09-BZ

APPLICANT – Richard Lobel, for Jack Kameo, owner.

SUBJECT – Application September 21, 2009 – Variance (§72-21) for the construction of a single family home on a vacant corner lot, contrary to floor area (§23-141), side

yards (§23-461) and front yard (§23-47). R4-1 zoning district.

PREMISES AFFECTED – 1910 Homecrest Avenue, Bound by East 12th Street and Homecrest Avenue, eastside of Avenue S, Block 7291, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Planet Fitness*) on the first, second, and third floors of an existing three-story building. C2-3 zoning district.

PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284, Lot 19, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for adjourned hearing.

273-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 24, 2010 – Variance (§72-21) for the construction of a two-story, one-family home, contrary to side yards (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 117-40 125th Street, west side of 125th Street, 360' north of intersection with Sutter Avenue, Block 11746, Lot 64, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Joyce Walton, kamala Balkarav and Irene B. Dimole.

ACTION OF THE BOARD – Laid over to March 16, 2010, at 1:30 P.M., for continued hearing.

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.

SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

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PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

329-09-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 1:30 P.M., for continued hearing.

2-10-BZ

APPLICANT – Akerman Senterfitt LLP, for The New York Eye & Ear Infirmary, owner.

SUBJECT – Application January 6, 2010 – Special Permit (§73-641) to allow enlargement of a community facility (*New York Eye and Ear Infirmary*) within the required rear yard equivalent, contrary to §33-283. C1-6A/C1-7A zoning districts.

PREMISES AFFECTED – 310 East 14th Street, block front on east side of Second Avenue between 13th and 14th Streets, Block 455, Lot 1, 5, 7, 60, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Kevin D. Ramsey.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 2, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.