
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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41-10-BZ

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41-10-BZ

522-566/596-600 First Avenue, East 34th Street; Franklin D. Roosevelt; East 30th Street;& First Avenue, Block 962, Lot(s) 80,108 & 1001-1107, Borough of **Manhattan**, **Community Board: 6**. Variance to permit enlargement of a medical center. R8 district.

42-10-BZ

2170 Mill Avenue, South side of Mill Avenue, approximately 116' west of intersection with Strickland Avenue., Block 8470, Lot(s) 1150, Borough of **Brooklyn**, **Community Board: 18**. Variance to allow a Multiple dwelling, contrary to use regulations. R3-1; C2-2/R3-1 district.

43-10-BZ

23-70 Steinway Street, West side of Steinway Street 17.65' north of Astoria Boulevard North., Block 803, Lot(s) 75, Borough of **Queens**, **Community Board: 1**. Special Permit (73-244) to allow an eating and drinking establishment. C2-2 IN R5 district.

45-10-BZ

1413-1429 Edward L. Grant Highway, Southwest corner of Plimpton Avenue and Edward L. Grant Highway., Block 2521, Lot(s) 15, Borough of **Bronx**, **Community Board: 4**. Special Permit (11-411) to reinstate prior variance. C1-4/R7-1 district.

46-10-BZ

1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot(s) 1, Borough of **Brooklyn**, **Community Board: 15**. Special Permit (73-44) to permit reduction in required parking for ambulatory and diagnostic treatment center. C4-2 district.

47-10-BZ

895 Zerega Avenue, Zerega Avenue and Story Avenue., Block 3698, Lot(s) 36, Borough of **Bronx**, **Community Board: 9**. Variance to permit the usage of warehouse, contrary to regulations. M1-1/R3-2 district.

48-10-BZ

2965 Vetrans Road West, 0'0" SS Vetrans Road West & Tyrellan Avenue., Block 7511, Lot(s) 1,75 & 150, Borough of **Staten Island**, **Community Board: 3**. Special Permit (73-36) to legalize the operation of a physical culture establishment. M1-1SRD district.

49-10-A

28 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 42, Borough of **Staten Island**, **Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

50-10-A

26 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 43, Borough of **Staten Island**, **Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

51-10-A

22 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 44, Borough of **Staten Island**, **Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

52-10-A

20 Winchester Avenue, South side of Winchester Avenue 0' east of Tennyson Drive., Block 5320, Lot(s) 45, Borough of **Staten Island**, **Community Board: 3**. Construction not fronting a mapped street, contrary to GCL 36. R3-1 district.

53-10-A

2031 Burr Avenue, Approximately 157 feet northwest of the corner of Burr Avenue and Westchester Avenue., Block 4249, Lot(s) 39, Borough of **Bronx**, **Community Board: 10**. Appeal for common law vested rights to continue development under the prior zoning district. R5A 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

APRIL 27, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 27, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Phillip and Martin Blessinger, owner; BP Products North America, Incorporated, lessee.

SUBJECT – Application April 27, 2010 – Extension of Term for the continued use of a Gasoline Service Station (British Petroleum) which expires on November 14, 2011; Waiver of the Rules. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, corner of Hylan Boulevard, corner of Hylan Boulevard and Reid Avenue, Block 3350, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

10-10-A

APPLICANT – Law Office of Fredrick A. Becker, for Joseph Durzieh, owner.

SUBJECT – Application January 25, 2010 – Appeal seeking a common law vested right to complete construction commenced under the prior R4-1 Zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East 12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

23-10-A thru 26-10-A

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223rd Street Management Corp., owner.

SUBJECT – Application February 23, 2010 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R1-2 zoning district. Series cases 23-10-A thru 26-10-A.

PREMISES AFFECTED – 39-39 223rd Street and 223-01/15/19 Mia Drive, between 223rd Street and Cross Island Parkway, Block 6343, Lots 154-157, Borough of Queens.

COMMUNITY BOARD #11Q

57-10-A

APPLICANT – Eric Palatnik, P.C., for 517 53rd Street, Inc., owner.

SUBJECT – Application April 19, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C4-3 zoning district. R6B zoning district.

PREMISES AFFECTED – 517 53rd Street, between Fifth Avenue and Sixth Avenue, Block 808, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APRIL 27, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 27, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

194-09-BZ

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

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

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

COMMUNITY BOARD # 18BK

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – (§72-21) Variance to allow the erection of a ten-story, mixed-use residential, community facility and commercial building in an M1-4 zoning district. The application seeks to vary sections: 42-00, 43-12 and 43-122 (Community facility floor area), 43-43 (Height and sky exposure plane, and 44-21 (parking) of the zoning resolution.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

CALENDAR

34-10-BZ

APPLICANT – James Chin & Associates, LLC, for Harry Tran, owner; Shu Ying Zhao, lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment (York Spa Beauty Care) in the cellar and first floor of an existing five-story building. M1-5B zoning district.

PREMISES AFFECTED – 429 Broome Street, south side of Broome Street, from the corner formed by Broome and Crosby Street, Block 473, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 13, 2010
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a catering hall (Use Group 9), which expired on October 19, 2009; and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with continued hearings on January 26, 2010, and March 16, 2010, and then to decision on April 13, 2010; and

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

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

WHEREAS, the subject site is located on the east side of Shell Road, between Avenue X and Bouck Court, partially within a C1-2 (R4) zoning district and partially within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004 when, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement of a one-story commercial building to a two-story commercial building

occupied as a catering hall, to expire October 19, 2009; and WHEREAS, the applicant now requests a ten-year extension of term; and

WHEREAS, at hearing, the Board requested that the applicant: (1) clarify whether it complies with the condition of the previous grant requiring that parking be provided for patrons of the catering establishment; (2) submit any public assembly permits related to the catering use; and (3) provide the hours of operation for the catering establishment; and

WHEREAS, in response, the applicant submitted a letter from the owner of 2569 Shell Road, stating that the applicant has leased the property for use as an attended parking lot with 80 spaces for the past five years and intends to enter into a permanent lease with the applicant pending the subject application; and

WHEREAS, the applicant also provided a statement from the owner of 2569 Shell Road, which reflects that the site is not for sale and remains available to provide the required parking; and

WHEREAS, the applicant submitted two Place of Assembly permits issued by the Department of Buildings for the first floor and second floor of the building, respectively; and

WHEREAS, the applicant states that the hours of operation for the catering establishment are 11:00 a.m. to 10:00 p.m., daily, and that it remains open until 1:00 a.m. on nights when there is an event at the site; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on October 19, 2004, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 19, 2009, to expire on October 19, 2019, *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 the term of this grant shall expire on October 19, 2019;

THAT a minimum of 80 off-site parking spaces shall be provided for patrons of the catering establishment for the duration of the variance, and such parking shall be located no further than 600-ft. from the site, as required by ZR § 36-43;

THAT all fire safety measures as shown on the BSA-approved plans shall be installed and maintained;

THAT all sound attenuation measures as shown on the BSA-approved plans shall be installed and maintained;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

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

THAT a new certificate of occupancy shall be obtained by April 13, 2011;

THAT all conditions from prior resolutions not

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specifically waived by the Board remain in effect;

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

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

(DOB App. No. 301263816)

Adopted by the Board of Standards and Appeals, April 13, 2010.

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 – 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

834-60-BZ

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

SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.

PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

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

617-80-BZ

APPLICANT – Eric Palatnik, P.C. for J & S Simcha, Incorporated, owner.

SUBJECT – Application February 5, 2010 – Extension of Term of a previously granted Variance (§72-21) of a UG9 catering establishment which expires on December 9, 2010; an Amendment to the interior layout; Extension of Time to Complete Construction and to obtain a Certificate of Occupancy which expires on March 14, 2010 and Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 770/780 McDonald Avenue, West side of McDonald Avenue, 20' south of Ditmas Avenue. Block 5394, Lots 1 & 11, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik and Joseph Fekete.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M. for continued hearing.

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district.
PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman and Barney Sigman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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

16-92-BZ

APPLICANT – NYC Board of Standards and Appeals.
OWNER: High Tech Park, Inc.
SUBJECT – Application April 25, 2008 – Dismissal for lack of prosecution for an extension of time to obtain a Certificate of Occupancy, and an Amendment to allow an additional non-conforming use on the zoning lot. R5/C1-3 zoning district.

PREMISES AFFECTED – 72/84 Sullivan Street, north side of Sullivan Street, east of Van Brunt Street, Block 556, Lot Tent.43, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

In Favor: Elizabeth Safian.

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

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.
SUBJECT – Application October 29, 2009 – Extension of Term of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street, aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

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

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

280-98-BZ

APPLICANT – Rampulla Associates Architects, for MARS Holding, LLC, owner.
SUBJECT – Application February 13, 2010 – Extension of Term of a variance (§72-21) for the continued operation of a UG4 Dental Office which expired on February 8, 2010; Amendment to convert the basement garage into dental

office floor area. R-2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100’ north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

ACTION OF THE BOARD – Laid over to May 18, 2010, at 10 A.M., for continued hearing.

72-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for PGREF I 1633 Broadway Tower, L.P., owner; Equinox 50th Street, Incorporated, lessee.

SUBJECT – Application January 12, 2010 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Equinox Fitness*) which expired on January 11, 2010. C6-7 (MID) zoning district.

PREMISES AFFECTED – 1633 Broadway, 215 West 50th Street; 210 West 51st Street, west side of Broadway between West 50th and West 51st Streets, Block 1022, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

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

111-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Alex Lyublinskiy, owner.

SUBJECT – Application to reopen pursuant to court remand (Appellate Division) to revisit the findings of a Special Permit (§73-622) for the in-part legalization of an enlargement to a single family residence. This application seeks to vary open space and floor area (§23-141); side yard (§23-48) and perimeter wall height (§23-631) regulations. R3-1 zoning district.

PREMISES AFFECTED – 136 Norfolk Street, west side of Norfolk Street between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD# 15BK

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Susan Klapper and Judith Baron.

ACTION OF THE BOARD – Laid over to June 8, 2010, at 10 A.M., for continued hearing.

MINUTES

92-08-BZ

APPLICANT – NYC Board of Standards and Appeals.
OWNER: Boquen Realty, LLC.
SUBJECT – Application April 14, 2008 – Dismissal for lack of prosecution for a variance (§72-21) to allow residential conversion and enlargement of an existing building, contrary to bulk regulations. M1-5B zoning district.
PREMISES AFFECTED – 13 Crosby Street, east side of Crosby Street between Grand and Howard Street, Block 233, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

In Favor: Juan D. Reyes, III.

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

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.
SUBJECT – Application October 13, 2009 – Amendment of a previous grant for public parking garage; amendment would enclose rooftop parking. C6-2 (Special Clinton District) zoning district.
PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candreva.

THE VOTE TO CLOSE HEARING –

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

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

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.
SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment, contrary to §32-00, and a dance studio (Use Group 9), contrary to §32-18. The amendment seeks to enlarge the floor area occupied by the PCE. C1-2/R2 zoning district
PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Richard Lobel.

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

APPEALS CALENDAR

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations. R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a large-scale residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 26, 2010, after due notice by publication in *The City Record*, with continued hearings on February 23, 2010 and March 16, 2010, and then to decision on April 13, 2010; and

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

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

WHEREAS, the applicant states that the subject premises consists of an approximately 24.3 acre development site on Block 6979; and

WHEREAS, the applicant proposes to develop the entire site with 176 semi-detached homes, including 350 dwelling units and a community facility building (the “Development”); and

WHEREAS, the applicant represents that of the 176 semi-detached homes and community facility building that comprise the Development, the subject appeal seeks a determination that the owner has obtained a vested right to complete 102 of the semi-detached homes for which permits have not been obtained and construction has not been completed; and

WHEREAS, the applicant commenced development by obtaining approvals from a number of government agencies, including the City Planning Commission (“CPC”), the Department of Buildings (“DOB”), the Department of

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Environmental Protection (“DEP”), the Department of Transportation, and the Fire Department to permit the proposed project in the R3-2 zoning district within the Special South Richmond Development District (“SSRDD”); and

WHEREAS, on December 22, 1999, the CPC issued the following approvals, in relation to development within the SSRDD: (1) special permits pursuant to ZR §§ 107-76 and 107-77, to allow adjustments in the boundaries of designated open space and the construction of a community facility building in designated open space; (2) authorizations pursuant to ZR §§ 107-64 and 107-65 for the removal of trees and the modification of existing topography; and (3) certifications pursuant to ZR §§ 107-22, 107-221, 107-222, 107-323, and 107-50 to permit development within a site containing designated open space, active recreational facilities in designated open space, public pedestrian ways, and the substitution of plant material; and

WHEREAS, on December 22, 1999, the applicant also secured (1) a zoning text change to provide an adjustment of the designated open space boundaries on map 33a and 33b in Appendix A of the SSRD regulations; (2) an amendment to the City Map to eliminate the mapped but unbuilt streets at the site to facilitate the proposed development and to map a turnaround; and (3) a special permit pursuant to ZR § 74-732 to allow a sewer pumping station that would convey sewage from the site to a new sewer in order to avoid the need to install a sewer line across the designated open space and associated freshwater wetlands on the adjacent site; and

WHEREAS, on March 6, 2000, the Department of City Planning (“DCP”) sent a letter to the DOB Staten Island Borough Commissioner, advising DOB of the approved CPC actions and providing copies of the approved site plan; and

WHEREAS, on January 9, 2002, under Job No. 500384238, DOB issued a permit for site work related to the Development; and

WHEREAS, on February 8, 2002, under Job No. 500520206, DOB approved a Builder’s Pavement Plan for the Development; and

WHEREAS, on August 22, 2002, the proposed site plan was approved by the Fire Department for access and hydrant requirements; and

WHEREAS, on December 23, 2002, the Department of Environmental Protection (“DEP”) approved the proposed water main for the Development; and

WHEREAS, on March 12, 2003, DCP sent a letter to the Staten Island Borough Commissioner, confirming the renewal of the CPC actions related to the Development; and

WHEREAS, on June 23, 2003, the Department of Transportation issued permits for the construction of new sidewalks for the Development; and

WHEREAS, on July 17, 2003, DEP approved the construction of a private sanitary drain for the Development; and

WHEREAS, on May 10, 2004, the New York State Office of the Attorney General approved a “No Action Application” in connection with the March 2004 creation of the Maguire Avenue Homeowners’ Association; and

WHEREAS, on August 12, 2004 (the “Enactment

Date”), CPC enacted the Lower Density Growth Management text amendment (the “LDGMA”), which rendered the Development non-complying in terms of minimum front yard depth (the requirement is now 18’-0”), minimum rear yard depth (the requirement is now 30’-0” with landscaped buffer with a minimum depth of 8’-0”), parking (three spaces are now required for a two-family home), and planting strips (a planting strip with a minimum depth of 8’-0” is now required between private roads and adjacent properties); and

WHEREAS, the development complied with the prior zoning requirements, which permitted a front yard with a minimum depth of 5’-0”, a rear yard with a minimum depth of 15’-0”, one parking space, and a 3’-0” planting strip between private roads and adjacent properties; and

WHEREAS, prior to the Enactment Date, the developer installed all of the sewer infrastructure, water mains, and hydrants for the entire development, and excavated the roadways, cleared the land, performed landscaping, and installed fencing for the development; and

WHEREAS, additionally, construction commenced and 72 of the homes were constructed as of the Enactment Date and have been issued certificates of occupancy by DOB; and

WHEREAS, accordingly, based upon the already completed work, the applicant seeks a Board determination that it has vested its right to complete the Development as originally proposed; and

WHEREAS, as a threshold matter in determining this appeal, the applicant must establish whether construction was conducted pursuant to valid permits; and

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

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance.”; and

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

WHEREAS, the applicant represents that it obtained Permit No. 500384238 to perform site work related to all 176 semi-detached homes and the community facility comprising the Development on January 9, 2002, as well as permits for the

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construction of the 72 now completed homes, but did not obtain individual permits for the 102 semi-detached homes subject to this application; and

WHEREAS, because permits for 102 of the homes were not issued, the applicant requests that the Board contemplate the subject application in the context of a large-scale development planned as a single integrated project, such that it is subject to a separate line of cases that establish the Single Integrated Project Theory (or “SIPT”); and

WHEREAS, the SIPT allows a developer to vest uncompleted, even uninitiated, components of a larger development project where there has been plat or subdivision approval (see e.g. Telimar Homes v. Miller, 14 A.D.2d 586 (2nd Dep’t, 1961); Putnam Armonk Inc. v. Town of Southeast, 52 A.D.2d 10, (2nd Dep’t, 1976); and Cypress Estates, Inc. v. Moore, 273 N.Y.S.2d 509, (Sup. 1966)); and

WHEREAS, further, in SIPT cases, it is not necessary that building permits have been obtained for each and every building proposed to be vested; and

WHEREAS, in this sense, the Board observes that the SIPT appears to be an exception to the general rule that a valid permit is required in order to vest; and

WHEREAS, the SIPT presumes that for large-scale multi-plat, multi-unit developments, it is not feasible or desirable to obtain permits for every building in every plat at the same time because such projects are developed in stages, and it is more logical for permits to be obtained on a plat by plat basis; and

WHEREAS, the Board has reviewed the relevant cases, and observes that the SIPT may be applicable to a vesting determination if the following requirements are met: (1) the reviewing approval body was on notice that the various buildings were intended to be part of a larger, integrated development; (2) some work has been performed on a fundamental component of the development, pursuant to an approval; (3) some expenditure and physical work that benefits all of the components of the development (such as roads or sewers) has been undertaken; (4) economic loss would result from the inability to proceed under the prior zoning, due to the inability to adapt the work to a complying development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, as established below, the applicant addressed both the SIPT factors as well as the traditional common law vesting criteria as to work, expenditure, and serious loss; and

WHEREAS, as to the SIPT factors, the applicant showed that: (1) DOB approved a site plan showing the entire 176-unit development and was made aware of a number of CPC actions related to the Development, and was therefore on notice that it was intended to be a single integrated residential project; (2) construction of the community facility building and 72 of the 176 residential buildings has been performed pursuant to valid permits; (3) expenditures were made and work was conducted on infrastructure that benefits the entire development, namely the sewer expenditures and construction, landscaping expenditures, expenditures related to roadways, and

expenditures for the recreation center and club house; (4) economic loss would result from the inability to proceed under the prior zoning, due to the need to redesign the development; and (5) no overriding public concern related to the new zoning exists; and

WHEREAS, as to this last factor, the Board observes that while the LDGMA reflects a serious legislative concern about overdevelopment on Staten Island, the proposed development was planned and acted upon well prior to the Enactment Date and therefore the pertinent LDGMA provisions should not override the vested rights claim; and

WHEREAS, the Board notes that under the SIPT, the developer was entitled to treat the entire development site as one, and that through construction of the 72 homes, the community facility building, and other global site preparation, including the installation of infrastructure benefiting the entire development, it was entitled to continue construction of all initially proposed homes; and

WHEREAS, the Board agrees that the applicant has established that the development qualifies as an integrated development under the SIPT, since all factors enumerated above have been satisfied; and

WHEREAS, as to substantial construction, the applicant states that before the Enactment Date, the developer constructed 72 out of the total of 176 proposed homes as well as the community facility building, and installed some sewer and other infrastructure for the development; and

WHEREAS, in support of the assertion that substantial construction was performed, the applicant submitted the following evidence: photographs of the site, a site plan showing the amount of work completed, a sewer contract, certificates of occupancy, and statements from the architect and engineer; and

WHEREAS, based upon the above evidence, the Board concludes that a significant amount of work was performed at the site prior to the Enactment Date; and

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended a total of approximately \$15,477,145 out of the anticipated total development cost of \$64,880,000 for the project; and

WHEREAS, said expenditures related to the construction of the 72 completed homes and the community facility building, as well as costs related to sewer infrastructure, land clearing, roadways, landscaping, and fencing for the entire site; and

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

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

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

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

WHEREAS, the applicant explains that compliance with the present LDGMA provisions would result in the loss of four of the proposed two-family homes and the conversion of 100 two-family homes to single-family homes; and

WHEREAS, the applicant contends that the reduced unit count and conversion to single-family homes would lead to a diminished profit over the entire development site, resulting in a loss of approximately \$22,200,000; and

WHEREAS, the applicant states that compliance with the LDGMA requirements would also result in the need for new surveys, lot subdivisions, street redesign, and new architectural plans; and

WHEREAS, the Board agrees that the non-recoupable expenditures related to the need to redesign the development, and the lost revenue arising from the reduced unit count and conversion of the homes, when viewed in the aggregate, constitute a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, the supporting documentation for such representations, as well as the discussion of the SIPT, and agrees that the applicant has satisfactorily established that a vested right to complete construction of all 102 of the proposed homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting the issuance of DOB Permit Nos. 510067348, 510067357, 510067366, 510067375, 510067384, 510067437, 510067446, 510067455, 510067464, 510067473, 510067311, 510067482, 510067507, 510067516, 510067525, 510067543, 510067703, 510067712, 510067687, 510067785, 510067776, 510067641, 510067650, 510067767, 510065322, 510065340, 510065402, 510065411, 510065368, 510065395, 510065359, 510065331, 510065386, 510065377, 510065055, 510065064, 510065073, 510065082, 510064289, 510064270, 510064261, 510064298, 510064305, 510064314, 510062753, 510062799, 510062780, 510062575, 510062806, 510062815, 510062824, 510062833, 510062842, 510062851, 510062860, 510062879, 510064403, 510061665, 510062548, 510062557, 510061674, 510062539, 510063271, 510063280, 510063299, 510063306, 510063315, 510063217, 510064323, 510064332, 510064341,

510064350, 510067758, 510067696, 510067678, 510067669, 510067721, 510067730, 510065126, 510065135, 510065144, 510065091, 510065108, 510065117, 510064369, 510063226, 510063235, 510063244, 510063262, 510063342, 510063351, 510063360, 510063379, 510063388, 510063397, 510064378, 510064387, 510063404, 510063413, 510063431, 510063422, 510064396, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, April 13, 2010.

167-09-A
APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.
SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building's determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.
PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK
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, April 13, 2010.

185-09-A & 186-09-A
APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.
SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to Section 36 of the General City Law. R3 Zoning district.
PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block 6789, Lot 142, 144, Borough of Staten Island.

COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Les Newhalfen.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

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WHEREAS, the decision of the Staten Island Borough Commissioner dated May 26, 2009, acting on Department of Buildings Application Nos. 510046549 and 510046530, reads in pertinent part:

“The street giving access to the proposed buildings is not duly placed on the official map and therefore:

- A No Certificate of Occupancy can be issued, as per Article 3, Section 36 of the General City Law; and
- B Proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 501.3.1 of the Building Code;” and

WHEREAS, this is an application to permit the proposed construction of two detached two-family homes not fronting on a legally mapped street, contrary to Section 36 of the General City Law; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in the *City Record*, with a continued hearing on April 13, 2010, and then to closure and decision on the same date; and

WHEREAS, by letters dated January 27, 2010 and March 25, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections, with the following conditions: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code (the “Building Code”); and (2) the entire building be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10; (3) the fire apparatus access road shall be construed in accordance with the requirements of Fire Code § 503.1.1; (4) “No Parking” signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of Fire Code § 503.7; and (5) the height of the dwelling shall not exceed 35 feet above the grade plane; and

WHEREAS, in response, the applicant submitted revised plans which reflect the five above-mentioned conditions requested by the Fire Department, including fully sprinklering the building and providing interconnected smoke alarms; 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 Staten Island Borough Commissioner, dated May 26, 2009, acting on Department of Buildings Application Nos. 510046549 and 510046530 is modified by the power vested in the Board by Section 36 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 April 9, 2010 - (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 entire building shall be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of

1999 and Reference Standard 17-2B of the Building Code;

THAT the entire building shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with Building Code § 28-907.2.10;

THAT the fire apparatus access road shall be construed in accordance with the requirements of Fire Code § 503.1.1;

THAT “No Parking” signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of Fire Code § 503.7;

THAT the height of the dwelling shall not exceed 35 feet above the grade plane;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

306-09-A

APPLICANT – New York City Department of Buildings

OWNER – Luis Cuji

SUBJECT – Application November 9, 2009 – Appeal seeking to revoke the Certificate of Occupancy for failure to comply with provisions of the Zoning Resolution, Building Code and Multiple Dwelling Law. R5 Zoning district.

PREMISES AFFECTED – 37-48 60th Street, West side of 60th Street 38th and 37th Avenues. Block 1214, Lot 84. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Amandus Derr.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 401686314F (the “CO”) for a building at the subject site due to its non-compliance with the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in *The City Record*, with continued hearing on

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March 16, 2010, and then to decision on April 13, 2010; and

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

WHEREAS, a representative of the owner of 37-48 60th Street testified at hearing; and

WHEREAS, the subject premises is located on the west side of 60th Street, between 38th Avenue and 37th Avenue; and

WHEREAS, the site is occupied by a four-story residential building, with three dwelling units, classified as Building Occupancy Group J-4, as reflected on the CO; and

WHEREAS, DOB states that the subject building, which was converted from a two-family home to a three-family multiple dwelling and enlarged, does not comply with provisions of the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution; and

WHEREAS, as discussed in more detail below, DOB states that (1) the building is an unlawful multiple dwelling in that it was converted from two to three residential units which is a different building class and requires fireproof construction; (2) the enlargement increased the degree of non-compliance with regard to side yards; (3) there is insufficient parking; (4) a legally required window is located too close to the side lot line; (5) the required side setback is not provided; (6) the building does not lawfully accommodate persons with physical disabilities; and (7) there is not adequate egress from the third-floor unit; and

WHEREAS, accordingly, in the absence of a plan to resolve the outstanding non-compliance, DOB requests that the Board revoke the CO; and

WHEREAS, on July 1, 2003, the prior owner's engineer submitted an application, under Application No. 401686314, through DOB's Professional Certification program for the enlargement of an existing two-family building and its enlargement to a three-family building; and

WHEREAS, on May 25, 2004, DOB issued work permits for the construction; and

WHEREAS, on August 21, 2006, DOB issued a CO for the three-family four-story building; and

WHEREAS, on February 22, 2008, DOB audited Application No. 401686314 and identified six objections; and

WHEREAS, on July 29, 2008, DOB notified the owner of the audit failure and of its intent to seek revocation of the CO; and

WHEREAS, on or about October 31, 2008, a representative of the owner met with DOB to discuss the audit at which time DOB advised that the plans must be modified to resolve non-complying conditions; and

WHEREAS, on June 24, 2009, DOB audited the application again and identified eight objections; and

WHEREAS, by letter dated July 31, 2009, DOB notified the applicant again of its intent to seek revocation of the CO; and

WHEREAS, on August 14, 2009, the applicant met with DOB and DOB again advised that the plans must be modified to resolve non-complying conditions

WHEREAS, the eight objections identified during the June 24, 2009 audit (a slightly modified version of the earlier audit) are the basis for DOB's request for the revocation of the CO; and

WHEREAS, to date, the property owner has not provided any plans that resolve the noted objections; and

WHEREAS, the property owner provided written and oral testimony in opposition to DOB's application requesting the revocation of the CO; and

WHEREAS, the outstanding non-compliance is as follows: as to the MDL, DOB states that Section 56 prohibits the conversion of a frame dwelling not used as a multiple dwelling on April 18, 1929 to a multiple dwelling; MDL § 4.28 defines a frame dwelling as "a dwelling of which the exterior walls or any structural parts of such walls are of wood"; and

WHEREAS, DOB asserts that the previous CO for the building, issued in 1952, describes the construction classification as "frame" and permitted the occupancy of two families; DOB notes that the plans associated with Application No. 401686314 reflect wooden walls and structural components of the existing and enlarged portion of the building; and

WHEREAS, accordingly, DOB asserts that the building, which was not occupied by a multiple dwelling on April 18, 1929 and is constructed of wood, was converted to a multiple dwelling in violation of MDL § 56; and

WHEREAS, as to the side yards, DOB states that R5 zoning district regulations require that the subject detached residential building have two side yards, each with a minimum width of eight feet, pursuant to ZR § 23-462(a); and

WHEREAS, prior to the subject enlargement, the building provided two pre-existing non-complying side yards with widths of 6'-6" and 3'-0"; and

WHEREAS, DOB states that the construction increased the degree of non-compliance of the side yards because it added a fourth floor, floor area, and a dwelling unit within the required side yard, contrary to ZR §§ 23-462(a) and 54-31; and

WHEREAS, as to required parking, DOB states that, pursuant to ZR § 25-21, an enlargement of a two-family building that includes the addition of one dwelling unit must be accompanied by the addition of one parking space; and

WHEREAS, DOB notes that the property owner has not provided a parking space for the additional dwelling unit and that, contrary to the property owner's assertions, there is no basis for a waiver of the requirement; and

WHEREAS, as to required windows, DOB states that R5 zoning district regulations require that there be a minimum distance of 15 feet between a legally required window and a side lot line, pursuant to ZR § 23-861; and

WHEREAS, the property owner proposes a distance of 6'-6" between a legally required window and the side lot line; and

WHEREAS, as to the side setback, DOB states that R5 zoning district regulations require that the portion of the building above a height of 33 feet shall be set back from the

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side lot line or rear lot line for a distance equal to one-half the height of that portion of the residential building which has a height greater than 33 feet, pursuant to ZR § 23-661; and

WHEREAS, DOB notes that a portion of the building exceeds 33 feet in height without providing the required side setback; and

WHEREAS, as to accessibility, DOB states that Local Law 58/1987 requires that either (1) one dwelling unit be adaptable to persons with physical disabilities; or (2) an entrance be provided that is accessible to persons with physical disabilities; and

WHEREAS, further, DOB states that, pursuant to Administrative Code § 27-123.1, a building classified in occupancy group J-3 that is being altered to contain three dwelling units must either provide an entrance that is accessible or provide one “adaptable dwelling unit” in compliance with Administrative Code §§ 27-123.19(b) and 27-292.8; and

WHEREAS, DOB notes that, the entrance to the building is by stairs, without a ramp, and that the plans fail to demonstrate that any of the dwelling units can easily be converted to be used by people with physical disabilities; and

WHEREAS, as to the egress from the third floor, DOB states that MDL § 144 requires that a building with three or more stories shall have at least two means of egress extending to the roof from an entrance story, street, court, or yard; and, pursuant to MDL § 146, there shall be at least two means of egress from each dwelling unit; and

WHEREAS, DOB notes that there is only one means of egress from the third-floor apartment; and

WHEREAS, the Board agrees with DOB that the building fails to comply with the noted regulations; and

WHEREAS, the Board finds that the addition of the fourth floor and third residential unit triggers all of the non-complying conditions and presents potential health and safety concerns; and

WHEREAS, the Board notes that the property owner does not claim that it complies with the noted requirements or that the requirements are not relevant for the existing building and have been applied erroneously; and

WHEREAS, instead, the property owner raises defenses about DOB’s process, professional accountability, and equity; and

WHEREAS, specifically, the property owner asserts that (1) DOB negligently issued the CO; (2) the current owner purchased the subject building in January 2007, five months after the CO was issued and did not have firsthand knowledge of the application or approvals; (3) the property owner paid \$1,100,000 for the building and the principles of equity require that the building continue to be used in its current state; and (4) if the Board were to revoke the CO, it would deprive the property owner of his property and render the property valueless and create an undue hardship; and

WHEREAS, the property owner alleges that DOB was negligent in not identifying the objections during inspections throughout the construction process; and

WHEREAS, the property owner claims that only the prior property owner had knowledge of the substance of the application to convert the property from a two-family to three-family building and the current property owner states that he relied on public records that the building could be occupied legally as a three-family building; and

WHEREAS, the property owner claims that because he did not have knowledge of the flaws in the application or erroneous issuance of the CO, he should not be held responsible for the actions of DOB or the prior owner’s deceased engineer; and

WHEREAS, the property owner notes that he cannot bring a malpractice claim against the engineer who filed the conversion application because the engineer is deceased and, therefore, he does not have recourse; and

WHEREAS, DOB states that the permit, which was issued pursuant to DOB’s Professional Certification program and was not the result of DOB plan review, was issued in error and that the non-compliance was identified during audits of the plans, as noted above; and

WHEREAS, the property owner does not refute that the permits were issued pursuant to the Professional Certification program; and

WHEREAS, the Board rejects the argument that DOB had any obligation to review the plan approvals and permit issuance prior to the commencement of construction or to perform an audit earlier in the process; and

WHEREAS, DOB has issued numerous Policy and Procedure Notices (PPNs) regarding the Professional Certification program, all of which state that random audits of a certain percentage of applications will be made within a specified time period, but also that DOB reserves its right to audit any application at any time; and

WHEREAS, none of the PPNs issued by DOB require a DOB audit of all Professionally Certified jobs; and

WHEREAS, as to the property owner’s assertions about not being held responsible for the prior property owner’s erroneous application, the Board notes that the prior property owner is a predecessor in interest and the subject property owner assumed responsibility for his and his agents’ actions; and

WHEREAS, the Board notes that the basis for the CO was erroneous building plans, approved through the Professional Certification process, which were not subject to DOB review; and

WHEREAS, the Board acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of permits and issuance of the CO (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (N.Y. 1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and that DOB may not be estopped from correcting an erroneous approval of a building permit or issuance of a CO (see Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and; and

WHEREAS, the Board accepts that DOB’s discovery of non-compliance during an audit of plans, which had not

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been audited prior to permit issuance, is a rational basis for its request to revoke the CO; and

WHEREAS, the Board notes that DOB has given the property owner the opportunity to propose and discuss plan revisions, which would remedy the non-complying conditions and the property owner has failed to present an alternate plan, such as reducing the number of units back to two; and

WHEREAS, the Board notes that the property owner has had more than two years since DOB first issued its objections, to resolve the non-compliance and that, during that time, the building has been occupied contrary to the MDL, the Administrative Code, and the Zoning Resolution; and

WHEREAS, further, the Board granted a one-month adjournment during its hearing process to allow for the property owner to revise its plans and meet with DOB to resolve the outstanding non-compliance; and

WHEREAS, DOB stated, and the property owner did not disagree, that the property owner did not provide revised plans or offer any solutions to cure the non-complying, and in some cases potentially dangerous, conditions; and

WHEREAS, the property owner has maintained the untenable position that only a three-family building, as built, is viable; and

WHEREAS, DOB notes that the property owner suggested certain fire safety measures, but they were deemed to be inadequate; and

WHEREAS, as to the property owner's request that the Board consider the equities of the case, the Board responds, that it has considered the non-complying conditions and the public safety concerns associated with the conversion and enlargement of the frame building, and is not persuaded by the equity argument, even if it were within its purview to consider it; and

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

WHEREAS, further, the property owner claims that it is not economically or logistically possible for him to alter the building to resolve the outstanding objections; and

WHEREAS, specifically, the property owner states that: (1) the frame building cannot be converted to fireproof construction and would effectively require demolition; (2) the building had non-complying side yards before the conversion, thus, required side yards cannot be provided; and (3) side yard requirements conflict with parking requirements; and

WHEREAS, however, the property owner ultimately stated that (1) a ramp can be provided; and (2) a fire escape can be added at the third floor, in an effort to comply with the accessibility and egress objections; and

WHEREAS, the Board notes that certain regulations,

such as the side yard requirement, are only relevant with the addition of a third dwelling unit; ZR § 54-313 allows for the increase in non-complying side yard conditions in certain instances, but its applicability is limited to one and two-family homes; and

WHEREAS, the Board finds the assertion about the side yard requirement and parking to be unavailing; and

WHEREAS, the Board notes that the owner has stated that he is willing to install a ramp to provide access to the building and to install an additional means of egress from the fourth floor; and

WHEREAS, the Board notes that the proposal for access and egress could only potentially eliminate two of the outstanding objections and would not resolve all of the non-compliance that DOB has identified; and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject building is non-compliant with the Multiple Dwelling Law, the Administrative Code, and the Zoning Resolution.

Therefore it is Resolved that the application of the Commissioner of the Department of Buildings seeking the revocation of Certificate of Occupancy No. 401686314F, is granted.

Adopted by the Board of Standards and Appeals, April 13, 2010.

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 – None.

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

274-09-A

APPLICANT – Fire Department of New York, for Di Lorenzo Realty, Co, owner; 3920 Merritt Avenue, lessee.

SUBJECT – Application September 25, 2009 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Administration: Marc Pogestin, Esq.

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

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1-10-A

APPLICANT – Elizabeth Safian, for Ciro Faiella & Joseph Faiella, owner.

SUBJECT – Application January 4, 2010 – Appeal to an Order of Closure issued by the Department of Buildings. Per the Order, the site’s commercial vehicle storage, public parking lot, trucking terminal and a salvage yard uses constitute an illegal use in a residential district contrary to Administrative Code Section 28-212.2. R5 zoning district. PREMISES AFFECTED – 527 East 86th Street, 116’ east of Foster Avenue, fronting East 86th Street, Block 7965, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Sheldon Lobel, Ciro Faiella, Frank R. Seddio, Anthony E. Mazza, Marie Mazella, Louis Collichio and Elizabeth Arciuolo.

THE VOTE TO CLOSE HEARING –

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

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

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

ZONING CALENDAR

332-09-BZ

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 17, 2009, acting on Department of Buildings Application No. 320089872, reads:

“Proposed extension of an existing dwelling is contrary to:

- ZR Sec 23-141(a) floor area ratio
- ZR Sec 23-141(a) open space ratio
- ZR Sect 23-47 rear yards

and requires a special permit from the Board of Standards and Appeals as per Sec 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a two-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on February 23, 2010 after due notice by publication in *The City Record*, with a continued hearing on March 23, 2010, and then to decision on April 13, 2010; and

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

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

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue N and Avenue O, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a two-family home with a floor area of 2,695 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,695 sq. ft. (0.45 FAR) to 6,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 59 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 23’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, at hearing, the Board directed the applicant to provide plans which reflect the required side and rear setbacks and which show what portions of the attic count towards floor area; and

WHEREAS, in response, the applicant submitted

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revised plans reflecting the side and rear setbacks and an attic plan indicating which portions of the attic are above 8'-0" in height and which portions are below 8'-0" in height; and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a two-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 9, 2010"-(13) sheets and "March 11, 2010"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,000 sq. ft. (1.0 FAR); a minimum open space ratio of 59 percent; a side yard with a width of 7'-8" along the northern lot line; a side yard with a width of 26'-1" along the southern lot line; a rear yard with a minimum depth of 23'-0"; and a maximum total height of 38'-8½", as illustrated on the BSA-approved plans;

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

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

11-10-BZ CEQR #10-BSA-042K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 562 Court Street, LLC, owner; Brooklyn Kick Boxing Inc., lessee.

SUBJECT – Application January 26, 2010 – Special Permit (§73-36) to legalize and enlarge a physical culture establishment (*CKO Kickboxing*). C2-3/R6 zoning district. PREMISES AFFECTED – 562 Court Street (aka 21 Garnet Street) southwest corner Court Street and Garnet Street, Block 382, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 4, 2010, acting on Department of Buildings Application No. 320080210, reads in pertinent part:

"Proposed legalization and extension of use of an existing physical culture establishment in a C2-3 (R6) zoning district is contrary to ZR 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to Section ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the legalization of a physical culture establishment ("PCE") on the first floor of a five-story mixed-use commercial/residential building and to permit the extension of the use into a portion of the cellar, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 16, 2010 after due notice by publication in *The City Record*, and then to decision on April 13, 2010; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

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

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

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WHEREAS, the PCE occupies a total floor area of 2,419 sq. ft. on the first floor, and proposes to occupy an additional 1,705 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE is operated as CKO Kickboxing; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 9:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 6:00 p.m.; and

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

WHEREAS, at hearing, the Board directed the applicant to remove a non-complying banner sign from the top of the subject building; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of the sign; and

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since April 1, 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between April 1, 2008 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA042K, dated March 5, 2010; and

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

WHEREAS, no other significant effects upon the

environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R6) zoning district, the legalization of a physical culture establishment on the first floor of an existing five-story mixed-use commercial/residential building and the extension of the PCE to a portion of the cellar, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 8, 2010" - Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 1, 2018;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

15-10-BZ

APPLICANT – Dennis D. Dell'Angelo, for Avraham Rosenshein, owner.

SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461), and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100' north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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APPEARANCES –

For Applicant: Marc Dell'Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 14, 2010, acting on Department of Buildings Application No. 320093714, reads:

- “1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yard contrary to Sec. 23-46 and less than the required rear yard contrary to Sec. 23-47 ZR;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on March 9, 2010 after due notice by publication in *The City Record*, and then to decision on April 13, 2010; and

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

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

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,486 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,486 sq. ft. (0.62 FAR) to approximately 3,999 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 3'-10" along the southern lot line (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth

of 30'-0" is required); and

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

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received February 1, 2010”-(11) sheets and “February 24, 2010”-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 3,999 sq. ft. (0.99 FAR); an open space ratio of 58 percent; a side yard with a minimum width of 8'-8" along the northern lot line; a side yard with a minimum width of 3'-10" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, April 13, 2010.

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160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank Angelino and Jack Freeman.

For Opposition: Ronald J. Dillon.

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

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

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

31-09-BZ

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

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

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

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

173-09-BZ

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

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

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

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Chris Wright, Barbar Cohen and Kenneth Olson.

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

234-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.

PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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

272-09-BZ

APPLICANT – Jeffrey A. Chester, Esq., for Bob Roberts, owner; The Fitness Place Astoria N.Y. Inc., lessee.

SUBJECT – Application September 24, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors in an existing three-story building. C5-2.5 (M.D) zoning district.

PREMISES AFFECTED – 32-62 Steinway Street, north side, 281' east of 34th Avenue, Block 656, Lot 61, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jeffrey A. Chester.

THE VOTE TO CLOSE HEARING –

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

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

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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

APPEARANCES – None.

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

297-09-BZ

APPLICANT – Marvin Mitzner, Esq., for 180 Ludlow Development LLC, owner.

SUBJECT – Application October 20, 2009 – Variance (§72-21) to allow for the conversion of a recently constructed commercial building for residential use, contrary to rear yard regulations (§23-47). C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street approximately 125' south of East Houston Street, Block 412, Lot 48, 49, 50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Ian Rasmussen.

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

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

325-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.

SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue, contrary to lot coverage (§24-11), rear yard

(§24-36) and initial setback of front wall (§24-522). R6 zoning district.

PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Abe Berkowitz.

For Opposition: Stuart A. Klein.

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

330-09-BZ

APPLICANT – Eric Palatnik, P.C., for Zhenia Levinsky, owner.

SUBJECT – Application December 18, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141) and rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 230 Amherst Street, between Oriental Boulevard and Esplanade, Block 8738, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

18-10-BZ

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

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

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

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

MINUTES

20-10-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Soul Cycle East 83rd Street, LLC, lessee.
SUBJECT – Application February 8, 2010 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Soul Cycle*) on the ground floor of an existing six-story building. C1-9 zoning district.

PREMISES AFFECTED – 1470 Third Avenue, a/k/a 171-173 East 83rd Street, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Elizabeth Cutler.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.