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DIRECTORY

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

CALENDAR

AUGUST 3, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 3, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

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

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

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

98-97-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for 278 Eighth Associates, owner; TSI West 23 LLC d/b/a New York Sports Club, lessee.
SUBJECT – Application May 19, 2010 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation of a Physical Culture Establishment (New York Sports Club) which expired on November 1, 2006; Amendment to change the hours of operations; Waiver of the Rules. C2-7A zoning district.
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COMMUNITY BOARD #4M

APPEALS CALENDAR

102-10-A
APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.
SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.
PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q

AUGUST 3, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 3, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

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

86-10-BZ
APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owners.
SUBJECT – Application May 12, 2010 – Pursuant to (§11-411 & §11-412) for the re-instatement of a previously granted Variance for a UG16 Manufacturing Use which expired on June 10, 1980; the legalization of 180 square foot

enlargement at the rear of the building; waiver of the rules. R-5 zoning district.
PREMISES AFFECTED – 93-08 95th Avenue, south side of 95th Avenue, Block 9036, Lot 3, Borough of Queens.
COMMUNITY BOARD #9Q

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

93-10-BZ
APPLICANT – Harold Weinberg P.E., for Paul Grosman, owner; Willamsburg Charter School, lessee.
SUBJECT – Application May 25, 2010 – Variance (§72-21) to allow for reuse of the ground floor of the Williamsburg Charter School for a gymnasium, cafeteria, and multi-purpose room, contrary to floor area regulations.
PREMISES AFFECTED – 198 Varet Street, south side 170'6" west of White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #1BK

98-10-BZ
APPLICANT – Stuart A. Klein, Esq., for Geriann Tepedino, owner.
SUBJECT – Application June 1, 2010 – Special Permit (§73-621) to allow a rooftop addition to an existing five-story, mixed-use building. The proposal is contrary to ZR §111-111. Area B-1 of Tribeca Mixed-Use special purpose district, Tribeca East Historic District and M1-5 zoning district.
PREMISES AFFECTED – 44 Lispenard Street, between Church Street and Broadway, Block 194, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

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

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

SPECIAL ORDER CALENDAR

201-01-BZ
APPLICANT – Sheldon Lobel, P.C., for J.H.N. Corporation, owner.
SUBJECT – Application January 27, 2010 – Extension of Term (§72-01 & §72-22) of a previously approved variance permitting the operation of a automobile laundry, lubrication and accessory automobile supply store (UG16b); Amendment seeking to legalize changes and increase in floor area; and Waiver of the Rules. C4-1 zoning district.
PREMISES AFFECTED – 2591 Atlantic Avenue, northwest corner of Atlantic Avenue and Sheffield Avenue, Block 3668, Lot 36, Borough of Brooklyn.
COMMUNITY BOARD #5BK
APPEARANCES –
For Applicant: Josh Rinesmith.
ACTION OF THE BOARD – 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 waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of an automobile laundry, lubrication and accessory supply store (Use Group 16), and an amendment to legalize changes to the previously approved plans and operation of the site; and

WHEREAS, a public hearing was held on this application on March 23, 2010, after due notice by publication in *The City Record*, with continued hearings on May 11, 2010 and June 8, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on a corner through lot bounded by Atlantic Avenue to the south, Georgia Avenue to the west and Sheffield Avenue to the east, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1950 when, under BSA Cal. No. 789-49-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubritorium, car washing, motor vehicle repair shop, and office at the site; and

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

WHEREAS, on April 13, 1966, under BSA Cal. No. 1280-65-BZ, the Board reinstated the variance and permitted the construction of an additional one-story enlargement to the service building; and

WHEREAS, on February 1, 1977, under BSA Cal. No. 1280-65-BZ, the Board amended the grant to prohibit gasoline pumps and to omit the automobile service station use on the site, for a term of ten years; and

WHEREAS, on July 9, 2002, under the subject calendar number, the Board reinstated the variance to permit the enlargement of the existing building to be used as an automobile laundry, lubrication and detailing establishment and accessory automobile supply store, to expire April 16, 2012; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, the applicant also seeks an amendment to legalize the following changes to the previously approved plans: (1) an increase in the building's floor area from 8,300 sq. ft. to 9,125 sq. ft.; (2) the enlargement of the cellar; (3) an increase in the building height to 14'-0", with a 9'-6" parapet wall (total height of 23'-6"); (4) the reconfiguration of the oil change, auto laundry and accessory sales uses on the first floor of the building; and (5) the relocation of the building's restrooms and the creation of a small office space within the accessory sales portion of the building; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the increase in floor area to 9,125 feet or the cellar enlargement; and

WHEREAS, in response, the applicant states that the 825 sq. ft. increase in floor area and the cellar enlargement are necessary to provide additional room for cars to maneuver into the service area; to enclose the previously approved canopy area; to allow the installation of a customer bathroom, elevator lift and office area in the retail portion of the building; and to provide additional space for car wash supplies, accessory retail storage, an employee locker room, bathrooms, and an elevator lift in the cellar; and

WHEREAS, the applicant further states that the increased bulk at the site is permitted as-of-right in the subject C4-1 zoning district, and that the enlargement did not increase the number of conveyor lines used by the car wash or the number of service bays used by the lube center, and it did not increase the number of vehicles the car wash or lube center are able to service on a daily basis; and

WHEREAS, the applicant also proposes the following amendments to the operation of the site: (1) installation of an entrance along Atlantic Avenue with a width of 37'-3"; (2) extension of the wall and railing along Atlantic Avenue around the corner along the Georgia Avenue frontage; and (3) a change in the hours of operation; and

WHEREAS, the applicant states that in order to provide the ten reservoir spaces required by the Zoning Resolution and the Board's 2002 grant, the applicant needs to amend the plans to provide the proposed entrance along the Atlantic Avenue frontage to enable the auto laundry customers to enter from Atlantic Avenue; and

WHEREAS, the applicant notes that the auto laundry has been functioning illegally with an entrance via Georgia Avenue that is not contemplated on the previously-approved plans; the proposed amendment will enable the applicant to rectify this illegal condition; and

WHEREAS, the applicant states that the relocation of the auto laundry entrance to Atlantic Avenue will enable the applicant to remove the existing southernmost curb cut on Georgia Avenue; and

WHEREAS, at hearing, the Board directed the applicant to demonstrate the feasibility of the proposed modifications to the car wash layout, in light of the required U-turn vehicles must make at the entrance; and

WHEREAS, in response, the applicant submitted information from the Architectural Graphics Standards, the reference guide used to generate the turning circles depicted on the plans, which reflects that the diameter of the turning circle for mid-size cars is 43'-0", and the diameter of the turning circle for full-size cars is 46'-0"; therefore the proposed layout, which provides 43'-3" of turning space, can accommodate all small- and mid-size vehicles, but certain large vehicles will require attendants to make a three-point turn to enter the car wash; and

WHEREAS, the applicant also submitted a survey of the actual turning circle dimensions for a variety of newly manufactured vehicles, which reflects that virtually all sedans and minivans and most sport utility vehicles have turning circle diameters that will enable them to make the necessary U-turn and maneuver into the car wash lane under the proposed layout, and that only certain types of trucks and large sport utility vehicles exceed the space available and will require attendants to make a three-point turn to enter the car wash; and

WHEREAS, the applicant states that in order to ensure proper maneuvering of vehicles into the car wash entry, it will provide an attendant area where patrons will drop off their vehicles to attendants who will maneuver their vehicle into the car wash entrance while the patron proceeds into the accessory sales center; and

WHEREAS, the Board directed the applicant to install bollards along the property's southern and western lot lines, rather than the proposed metal railings, to enable patrons to access the sidewalk after exiting their vehicles at the attendant area; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of bollards along the southern and western lot lines, painted striping to direct vehicles entering the car wash's reservoir lanes and attendant area, and the installation of a sign directing patrons to drop off their vehicles at the attendant area and exit to the sidewalk (where they can proceed to the car wash's accessory sales center); and

WHEREAS, as to the hours of operations, the applicant requests that the car wash be permitted to operate 24 hours per day, while the hours of operation at the lube center will generally be limited to 7:00 a.m. to 7:00 p.m., daily, in accordance with the prior grant; and

WHEREAS, the applicant represents that the 24-hour operation of the car wash will not adversely impact the surrounding area because from the hours of approximately 7:00 p.m. to 7:00 a.m. only exterior washing will be permitted, while interior vacuuming will be prohibited; and

WHEREAS, the applicant states that the extended hours of operation for the car wash will also enable the applicant to clean and maintain the site and its car washing equipment during the slower hours, and will discourage vandalism and graffiti at the site; and

WHEREAS, further, the applicant notes that other car washes in the area remain open for 24 hours a day and that it requests such hours to remain competitive; and

WHEREAS, the Board directed the applicant to notify neighbors within a 200-ft. radius to see if there was any objection to the proposal; and

WHEREAS, the applicant notified the neighbors and the Board did not receive any objections; and

WHEREAS, at hearing, the Board questioned whether the site complies with C4 district signage regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the site complies with the C4 district regulations; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, and amendments are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 9, 2002, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the date of the grant, to expire on July 13, 2020; and to permit the noted amendments to the previously-approved plans; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "June 30, 2010"-(3) sheets and "July 9, 2010"-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2020;

THAT curb cuts, railing, bollards, and signage be installed and maintained, as reflected on the BSA-approved plans;

THAT site operations, including traffic flow and attendant parking, be maintained as reflected on the BSA-approved plans;

THAT signage on the site shall comply with C4 district regulations;

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

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable
provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 301084289)

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

103-05-A
APPLICANT – Rothkrug, Rothkrug, Spector, LLP, for Main Street Make Over 2, Incorporated, owner.
SUBJECT – Application April 20, 2010 – Application to reopen pursuant to a court remand (Appellate Division) for a determination of whether the Department of Buildings issued a permit in error based on alleged misrepresentations made by the owner during the permit application process.
PREMISES AFFECTED – 366 Nugent Street, southwest corner of the intersection of Nugent Street and Spruce Street, Block 2284, Lot 44, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Todd Dale.
ACTION OF THE BOARD – Appeal denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the Appellant seeks to have permits for the construction of a single-family home reinstated, absent City Planning Commission ("CPC") approval of a restoration plan, for a matter previously before the Board; and

WHEREAS, the Supreme Court, Appellate Division, has remitted the subject case to the Board for further review of a single question related to the Appellant's construction application, as discussed below; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with a continued hearing on June 15, 2010, and then to decision on July 13, 2010; and

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

Procedural History

WHEREAS, the case was formerly before the Board subject to a Final Determination issued in response to a request that the Department of Buildings ("DOB") lift the "Hold" status from DOB Application No. 500584799 so that the associated building permit could be renewed and reinstated; and

WHEREAS, DOB determined that CPC approval of a restoration plan, pursuant to ZR §§ 105-02 and 105-40 was required for the construction of a new home and a retaining wall at the site; the Final Determination reads "Denied. CPC restoration plan required"; and

WHEREAS, on December 13, 2005, under the subject calendar number, the Board denied the property owner's appeal of the Final Determination, thus concluding that a restoration plan is required for the home and the retaining wall; and

WHEREAS, the property owner filed an Article 78 proceeding (Mainstreet Makeover 2 Inc. v. BSA, 2008 NY Slip Op 08325 (2d Dept. 2008)), appealing the Board's decision, and the court overturned the Board; and

WHEREAS, the Board appealed the Supreme Court decision and the Appellate Division provided a modified judgment; the Appellate Division (1) affirmed the portion of the Board's decision which identified the construction of a new retaining wall as being subject to CPC approval pursuant to ZR § 105-40, (2) denied the property owner's request to direct DOB to reissue the permits, and (3) remitted the matter to the Board solely for "a determination on the issue of whether DOB issued the permit in error based upon alleged misrepresentations made by the architect during the permit application process with respect to plans to demolish the existing home and construct a new one on a different portion of the lot"; and

WHEREAS, the Appellate Division concluded that the property owner must seek CPC approval for the retaining wall, but that the requirement for CPC approval for the home construction is based on whether or not the Board determines that "DOB issued the permit with knowledge of the petitioner's plans, such that it cannot be said that the DOB issued its permit based upon erroneous presumptions due to misrepresentations"; and

WHEREAS, pursuant to the Court's order, if the Board finds that DOB did have knowledge of the full extent of the Appellant's plans, then the Board should direct DOB to renew and reinstate the permits, without the requirement for CPC approval of the demolition and construction of the home; and

WHEREAS, however, if the Board finds that DOB did not have knowledge of the full extent of the plans, then the Board must require the Appellant to secure CPC approval for the home's demolition and new construction; and

WHEREAS, accordingly, the scope of the Board's review is limited to whether the property owner misrepresented the extent of the demolition and construction of the home; none of the other issues of the original appeal, such as the analysis of the retaining wall, are under review; and

The Facts

WHEREAS, the following facts are agreed upon by all parties; and

WHEREAS, the subject site is an approximately 100 ft. by 130 ft. lot, with 12,072 sq. ft. of lot area, and is located within an R1-2 zoning district within the Special Natural Area District, NA-1 ("SNAD"); and

WHEREAS, the site was previously occupied by a two-story, single-family home with 1,417 sq. ft. of floor area constructed around 1920 (the "Original Home"); and

WHEREAS, the Appellant demolished the Original Home and constructed a new three-story home with 5,052 sq. ft. of floor area (the "New Home") on a completely different footprint on a different portion of the lot; and

WHEREAS, all parties agree that the Appellate Division has directed the Board to consider all relevant documents associated with the DOB approval in its analysis of whether or not there was misrepresentation; and

WHEREAS, the key documents which led to the approval of the plan to demolish the Original Home and build the New Home, without CPC approval are: (1) a pre-consideration, dated November 8, 2002, signed by the project architect and approved by then Borough Commissioner Canepa (the "Pre-Consideration"); (2) the building plans, filed January 28, 2003 with the Pre-Consideration and approved March 3, 2003, (the "Plans"); and (3) the PW-1 Alteration application documents, stamped September 29, 2003 (the "Application Documents"); and

WHEREAS, the Pre-Consideration, which was submitted and approved without any corresponding plans, states, in pertinent part:

> The client intent is to enlarge the existing house and to replace and relocate the existing square footage so as to be in compliance with existing zoning and to upgrade the structural integrity of the structure. In addition, the client intends to increase the square footage of the residence . . .
>
> As a structure built prior to the establishment of the Special Natural Area District in 1974 all alterations may be made without filing with the City Planning Commission . . . as a 'new building' application it would have to go to the City Planning Commission for approval as a 'new development' which clearly dose [sic] not truly represent this house accurately; and

WHEREAS, the Plans reflect the complete demolition of the Original Home and the construction of the New Home on a new footprint, with a new foundation, new floors, new walls, and a new roof, entirely unrelated to the Original Home; and

WHEREAS, the Plans also reflect the construction of a retaining wall, excavation, filling, and changes in topography and the existing drainage system; and

WHEREAS, the Application Documents describe a "horizontal enlargement," "vertical enlargement," and "partial demolition" of the existing two-story one-family home and "an increase of existing floor area by 3,569 sq. ft.; and

The Appellant's Primary Arguments

WHEREAS, the Appellant asserts the following primary arguments to support its claim that it did not misrepresent the extent of the proposed construction: (1) the application was approved pursuant to DOB's Technical Policy and Procedure Notice #1/02 ("TPPN 1/02"), which provides for certain construction to be exempted from the requirement of filing a new building application; (2) DOB understood that the Appellant was trying to avoid the requirement for CPC approval; and (3) DOB, including then-Borough Commissioner Canepa, who approved the Pre-Consideration, had an understanding of the full extent of the construction; and

WHEREAS, the Appellant asserts that TPPN 1/02 states that a new building application is required for alterations where an existing building is completely demolished to grade or more than 50 percent of the area of exterior walls of a building are removed in addition to removal of the roof and all floors above grade, and any portion of the foundation system is altered or enlarged, except where such requirement is waived by a Borough Commissioner, in certain circumstances; and

WHEREAS, TPPN 1/02's exception provision at the time of the Appellant's approval (it has since been modified) is as follows:

> The Borough Commissioner, upon review, may grant exceptions to the requirements for a "New Building" application set forth above when a building is subject to specific zoning provisions for existing buildings by virtue of its being located in a special use district or otherwise subject to special permit provisions from . . . City Planning Commission, and classification as a "new building" would adversely affect its status under "existing building" provisions; and

WHEREAS, the Appellant's architect also noted that since the Original Home was built prior to the 1974 establishment of the Special Natural Area District, all alterations may be made without filing with CPC; and

WHEREAS, the Appellant asserts that it was clear in its filing that the intent was to avoid the requirement for CPC review and approval of a restoration plan; and

WHEREAS, the Appellant concludes that because the intention of avoiding CPC review was known, there was not any misrepresentation as to the extent of the construction plans; and

WHEREAS, the Appellant concludes that because (1) the TPPN does not include language that prohibits a determination that the subject construction be considered an alteration, rather than a new building, (2) application materials identified the objective of bypassing CPC review, and (3) the Plans reflect the demolition of the Original Building and construction of the New Building, DOB understood the full extent of the proposed construction; and

WHEREAS, the Appellant asserts that the plans establish a basis for DOB's understanding that the Original Home would be demolished and yet the proposal would be accepted as an alteration-type application; and

WHEREAS, as to the Application Documents, the Appellant notes that it stated that there will be "relocation of existing square footage" and noted that demolition will occur, which suggests that there was not any misrepresentation; and

WHEREAS, finally, at hearing, the Appellant also stated that DOB directed it to use the noted terminology in its Pre-Consideration and Application Documents and that because the plans did not require the capping of the Original Home's sewer line, it was not technically a demolition, despite complete demolition of the Original Home's structure and failure to re-use any part of it; and

DOB's Response

WHEREAS, DOB states that it issued New Building Permit No. 500584799 in error based on misrepresentations made by the owner during the permit application process with respect to the owner's plans to demolish the Original Home and construct a New Home on a different portion of the lot; and

WHEREAS, DOB reiterates its arguments from the 2005 Appeal that the relevant question is whether the development is

a site alteration subject to CPC approval and not whether the correct application was filed, however, in direct response to the Appellate Division's remand, it provides the following arguments in support of its claim that the Appellant misrepresented its plans throughout the process; and

WHEREAS, DOB refers to its October 11 and November 22, 2005 responses in the 2005 Appeal for its arguments as to whether there was misrepresentation; and

WHEREAS, DOB states that its prior letters provide sufficient facts to establish that the owner misrepresented the nature and scope of the proposed work in order to secure a permit allowing an application to be filed as an "alteration" rather than a "development" in order to avoid CPC review pursuant to ZR §§ 105-02 and 105-40; and

WHEREAS, DOB maintains its position that the Appellant's pre-consideration request was an inaccurate representation of the proposed work, given the scope of the work filed for under the application and performed at the site; and

WHEREAS, DOB cites to the prior Board resolution, which states that "the construction of a dwelling with its own foundations on a portion of the lot previously unoccupied can in no way be characterized as an alteration of an existing building, especially where such existing building was located on another part of the lot and completely demolished . . . and logically, it can only be construed as construction of a new building on the lot, which falls squarely within the definition of 'development'"; and

WHEREAS, further, DOB notes that the resolution states that "the architect's pre-consideration request does not accurately reflect either the actual nature of the work proposed under the Application nor the actual work that occurred"; and

WHEREAS, additionally, DOB cites that the Board stated that "based upon the inaccurate representations made by the architect, the Board is unsurprised that permission was granted to file the proposed work as an alteration-type application rather than as a new building"; and

WHEREAS, the Board agrees with DOB that it analyzed the question of misrepresentation in the prior decision, as noted above, and concluded that the Appellant had misrepresented its plans to DOB through a series of inaccurate written statements; and

WHEREAS, although DOB finds that the Board has already decided that there was misrepresentation, in furtherance of the Court's order, it sets forth the following assessment anew: there is a contrast between the Pre-Consideration and the Application Documents which shows that the Appellant misrepresented the work as an enlargement when seeking permission to file an alteration-type permit application and submitted the pre-consideration grant with the Plans to demolish the Original Home and construct the New Home and retaining wall when it applied for the permit; and

WHEREAS, as noted above, in the pre-consideration request, the Appellant stated an "intent to enlarge the existing house and to replace and relocate the existing square footage . . . and to upgrade the structural integrity of the structure," "to increase the square footage of the residence" and concludes that "an application. . .for approval as a 'new development'. . . clearly dose [sic] not truly represent this house accurately"; and

WHEREAS, DOB notes that the former Staten Island Borough Commissioner Jorge Canepa granted the pre-consideration request on November 8, 2002, without the benefit of seeing the plans that were filed on January 28, 2003, with the signed pre-consideration request; and

WHEREAS, DOB notes that the Pre-Consideration describes an enlargement, while the Plans, show something drastically different: the demolition of an existing two-story 1,417 sq. ft. building and the construction of a three-story 5,052 sq. ft. building on a new footprint, with a new foundation, new floors, new walls and a new roof, entirely unrelated to the Original Home; and

WHEREAS, DOB states that the Appellant further obscured the true nature of the scope of work by describing it in the Application Documents as a "horizontal enlargement, "vertical enlargement" and "partial demolition" of the existing two-story one-family residential building with cellar and an "increase of existing floor area: by 3,569 sq. ft.; and

WHEREAS, DOB asserts that the Appellant sought preliminary approval for work that he falsely portrayed as an enlargement in order to obtain a permit for demolition and new construction without triggering the requirement for CPC approval; and

WHEREAS, DOB contends that it is not necessary to know whether former Borough Commissioner Canepa understood the true nature of the work at the time he granted the pre-consideration request in order to decide the matter on appeal; and

WHEREAS, DOB contends that Mr. Canepa's personal belief is not relevant because the written record establishes that the Appellant's pre-consideration request inaccurately describes the work for which it later sought a permit; and

WHEREAS, DOB states that it is not reasonable to argue that the written record is an accurate and complete description of work only if it is supplemented by a DOB employee's knowledge of additional information that is undocumented and may be inconsistent with that record; and

WHEREAS, DOB notes that DOB clerks, inspectors, attorneys, and the public rely on the accuracy and completeness of information contained within application documents and written records; and

WHEREAS, finally, DOB states that although TPPN 1/02 did not set forth a numerical standard for how much of a building could be demolished and still be considered an alteration, DOB did not have a policy of issuing waivers from the requirement to file new building type applications consistent with the TPPN in instances where an entire existing building would be demolished and a new building would be built in a different location; and

Conclusion

WHEREAS, the Board has reviewed TPPN 1/02 and agrees with the Appellant that it does not set forth any specific criteria for when a proposal may be eligible for the exception to the requirement for filing a new building application; and

WHEREAS, however, the Board does not agree that the absence of such criteria establishes that there is not any limit to how much of a building can be demolished and still fit within

the available exception and accepts DOB's assertion that borough commissioners did not have discretion to accept the entire spectrum of construction proposals, including one like the subject proposal, that provided for the complete demolition of the Original Home and the construction of a completely unrelated New Home, as fitting within an exception; and

WHEREAS, the Board notes that the exception to the requirement for a new building filing is just that, an exception, and should not be construed to allow for the broadest interpretation as the Appellant suggests; and

WHEREAS, the Board finds the Appellant's contention that, because it revealed the fact that it was seeking to avoid CPC review, it did not misrepresent its plans, to be unconvincing; and

WHEREAS, further, the Board recognizes that TPPN 1/02 specifically notes the ability to avoid CPC review; however, the Board does not find awareness of the Appellant's intent to bypass the review or consideration that the TPPN addresses such review, to lead to the conclusion that there was not misrepresentation as to the extent of the proposed construction; and

WHEREAS, the Board reviewed the Pre-Consideration, the Plans, and the Application Documents and finds that (1) the Pre-Consideration, when read independently and when considered in the context of being presented at the beginning of the approval process, suggests work that does not rise to the level of the demolition of the Original Home and construction of the unrelated New Home, (2) the Plans reflect more extensive construction, and (3) the Application Documents, again, reflect a lesser degree of construction; and

WHEREAS, the Board finds that, viewed independently, each of the three noted sources describe a different construction plan and that there is not any explanation for changing the description of the plan at different stages of the review process other than error or misrepresentation; and

WHEREAS, the Board notes that the Appellant states that the language used to describe the project was deliberate, thus there is not any suggestion that the changes in the way the project was described was an error; and

WHEREAS, the Board asked the Appellant why it did not clearly state its plans to demolish the Original Home rather than describe it as an enlargement and relocation of floor area, and was unconvinced by the Appellant's response that this was DOB policy because, since there was an exception to the requirement to file a new building permit, there does not appear to be any reason to avoid accurately describing the project; and

WHEREAS, further, the Board notes that if the Borough Commissioner had such broad discretion to apply the exception, pursuant to TPPN 1/02, as the Appellant suggests, then an accurate description of the proposal should not have interfered with the approval; and

WHEREAS, the Appellant has failed to provide any evidence of a DOB policy to manipulate commonly understood land use terms such as "enlargement" and "floor area" or to establish that there was any policy, or otherwise any logical reason, to describe the same project differently at different states of the approval process; and

WHEREAS, the Board agrees with DOB's position that the body of DOB records, including plans and communication between property owners and DOB employees, is given considerable weight and that those records are afforded great deference as they are what is relied upon in light of the passage of time and potential changes in DOB staff; and

WHEREAS, accordingly, the Board denies the Appellant's request to subpoena testimony from former Borough Commissioner Canepa because it finds that any conversation from 2002, if it could even be recalled, would not supersede a series of communication as recorded in official DOB documents; and

WHEREAS, the approvals arise from and are memorialized in the approved documents – written text and illustrations – not from conversations, of which there is no record; and

WHEREAS, the Board notes that the Appellant submitted a copy of the Pre-Consideration with all subsequent filing materials at DOB even though the Pre-Consideration was granted in the absence of any plans and, thus, bears no relationship to the Plans, which were never before former Borough Commissioner Canepa at the time of the Pre-Consideration; and

WHEREAS, this fact – that Mr. Canepa's Pre-Consideration arose at the early stage of the approval process - is further reason for denying the Appellant's request to subpoena testimony from Mr. Canepa, because he did not have the benefit of reviewing and approving the Plans, which are part of the entire approval process under review per the remand, with the pre-consideration request; and

WHEREAS, in conclusion, the Board notes that the Appellant represented in its Pre-Consideration and Application Documents that it planned to "enlarge the existing house," "upgrade [its] structural integrity," and "increase the square footage of the residence;" and

WHEREAS, the Appellant, admittedly, relied on statements, including the above-noted language, to obtain an approval that would allow it to avoid CPC review of its plans; and

WHEREAS, in light of the fact that the Appellant instead completely demolished the Original Home and constructed a New Home with no relationship to the Original Home, the Board concludes that the Appellant misrepresented the extent of its construction plan and its proposal, like the proposal for the retaining wall, is subject to CPC review; and

WHEREAS, the Board notes that the Appellant also stated in the Application Documents that "the intent of [the TPPN's] exclusion clause was to specifically address the problem faced by like homeowners attempting to improve their homes;" and

WHEREAS, bearing in mind the Appellant's own words, the Board identifies a connection between a goal of improving one's home set forth in the Application Documents and the elements of the Pre-Consideration (enlargement, upgrading structural integrity, and increasing floor area), but is unable to find any connection between either of those proposals and the complete demolition of a home, which far exceeds any notion of improving one's home or upgrading its structural integrity; and

WHEREAS, accordingly, the Board has determined that the Appellant misrepresented its plans to DOB during the process of seeking DOB approval.

Therefore it is Resolved that the answer to the court's question on remand as to whether there was misrepresentation on behalf of the Appellant in the context of DOB Application No. 500584799 is affirmative.

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

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez 4

Recused: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 6, 2006, acting on Department of Buildings Application No. 301914178, reads:

"Provide minimum side yards as per ZR 23-48
FAR exceeds that permitted by ZR 23-141
Proposed wall height exceeds that permitted by ZR 23-631;" and

WHEREAS, as will be discussed in more detail below, the applicant represents that it has resolved the non-compliances related to the side yards and height; and

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

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, with continued hearings on March 9, 2010, April 13, 2010, and June 8, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, on April 24, 2007, the Board denied an application for the legalization of the enlargement of a home at the site, upon a finding that the construction that occurred at the site failed to meet the required finding of an enlargement of an existing building, as set forth in ZR § 73-622, but rather constituted the construction of a new building; and

WHEREAS, in the absence of a positive determination on the threshold finding, the Board did not make the remainder of the special permit findings; and

WHEREAS, on May 25, 2007, the applicant commenced an Article 78 proceeding in Kings County Supreme Court to review the Board's determination; and

WHEREAS, on November 20, 2007, the Supreme Court granted the petition, directing the Board to grant the application; the Board appealed this decision; and

WHEREAS, on September 22, 2009, the Appellate Division, Second Department, concurred that the Board should not deny the application based on a failure to establish that the home constitutes an enlargement and remanded the matter back to the Board to review the findings of the special permit, pursuant to ZR §§ 73-622 and 73-03, specifically the question of whether the home was compatible with neighborhood character; and

WHEREAS, the Appellate Division held that in this case, the Board must accept that the applicant satisfies the criteria for an enlargement, specifically due to special and unforeseen circumstances requiring the demolition of the pre-existing building; and

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

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application, with the following primary concerns: (1) the proposal is new construction rather than an enlargement, and therefore is not eligible for the special permit; (2) the perimeter wall height is greater than the maximum permitted height of 21'-0" and the total height is greater than the maximum permitted height of 35'-0"; (3) the grade level is not depicted accurately on the plans; and (4) the plans DOB approved subsequent to the Board's 2007 denial should not have been approved; and

WHEREAS, the Board notes that 19 community members submitted consent forms in support of the application; and

WHEREAS, as to the Opposition's argument that the applicant demolished the previously existing home and the current proposal constitutes new construction which is not eligible for the subject special permit, the Board notes that the issue of whether the home is eligible for the special permit is not currently before it, as the Appellate Division has ordered the Board to accept the building as meeting the special permit threshold requirement and remanded the case to the Board solely to review the remaining findings of the special permit; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, in the Manhattan Beach neighborhood of Brooklyn; and

WHEREAS, the subject site has a total lot area of 3,241 sq. ft.; and

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

WHEREAS, the applicant seeks to legalize the existing floor area of 2,550 sq. ft. (0.79 FAR); the maximum permitted floor area is 1,620 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to legalize the open space ratio of 64.5 percent (65 percent is the minimum required); and

WHEREAS, as noted, the applicant represents that since the Board's denial of the original application, it has cured the objections issued by DOB related to side yards and perimeter wall height, and that the only remaining non-complying conditions are FAR and open space; and

WHEREAS, the Board notes that DOB has reviewed plans subsequent to the Board's denial, including as-of-right plans to obtain permits so that construction could continue at the site in 2007; and

WHEREAS, the Board notes that the applicant made certain modifications to the plans originally submitted to the Board and since the as-of-right plans were submitted to DOB, including sloping the wall to cure side yard non-compliance; and

WHEREAS, the applicant submitted a December 15, 2009 inspection report from DOB and represents that it reflects DOB's approval of the current building envelope, such that side yard and height relief is not required; and

WHEREAS, however, the Opposition maintains that the subject home has a non-complying perimeter wall height of approximately 29'-10" (the maximum permitted is 21'-0"), a non-complying total height of approximately 41'-5" (35'-0" is the maximum permitted), and that the grade level is not appropriately measured; and

WHEREAS, the Board notes that it does not have the authority under ZR § 73-622 to waive the perimeter wall height or total height and that the applicant is not seeking such waivers; and

WHEREAS, the compliance of the building envelope, including perimeter wall height and total height, will be subject to DOB review; and

WHEREAS, as to the Opposition's concerns about the plans the applicant submitted in 2007 so that it could continue construction, the Board does not find that to be relevant to the review of the subject special permit application since the subject application is for the legalization of the existing building, as reflected on the current plans, which will be reviewed and approved by DOB subsequent to the Board's approval; 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, in an R3-1 zoning district, the legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 21, 2010"-(16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,550 sq. ft. (0.79 FAR); a minimum open space of 64.5 percent; a side yard with a minimum width of 0'-11" along the northern lot line; a side yard with a minimum width of 4'-9" along the southern lot line; a maximum perimeter wall height of 21'-0", and a maximum total height of 35'-0"; as illustrated on the BSA-approved plans;

THAT DOB shall review the building envelope, including the perimeter wall height and total height for compliance with relevant zoning regulations;

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, July 13, 2010.

280-09-A
APPLICANT – NYC Board of Standards and Appeals
SUBJECT – Review of Board decision pursuant to Sec 1-10(f) of the Board's Rules and 666(8) of the City Charter of an appeal challenging the Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law relating to the construction of a proposed 17 story residential building. R10A zoning district.
PREMISES AFFECTED – 330 West 86th Street, south side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of Manhattan.
COMMUNITY BOARD #7M
APPEARANCES –
For Applicant: Albert Fredericks and Ken Kurland of HPD.
ACTION OF THE BOARD – Appeal granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the appeal comes before the Board in response to a Final Determination letter dated July 13, 2009 and affirmed on September 8, 2009, from the Manhattan Borough Commissioner of the Department of Buildings ("DOB") (the "Final Determination") addressed to a representative of the subject property owner (330 West 86th Street LLC, the "Appellant")1, with respect to DOB Application No. 110193102; and

WHEREAS, the Final Determination states, in pertinent part:

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

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

WHEREAS, subsequent to the Board's decision, the Board received (1) a request from the Department of Housing Preservation and Development ("HPD") to modify, but not reverse, the April Resolution to eliminate a portion of the determination, (2) a request from a representative of two neighboring buildings at 328 West 86th Street and 332 West 86th Street (the "Neighbors") that the case be re-heard, vacated, or dismissed based on procedural concerns, (3) service of an Article 78 proceeding from the Neighbors (328 Owners Corp. and 86th Apartment Corporation v. Board of Standards and Appeals et al, Index No. 106677/10), and (4) submissions from the Appellant in response to HPD and the Neighbors and stating opposition to the request to modify the April Resolution or otherwise disturb the decision based on procedural grounds; and

WHEREAS, the Board received written testimony in opposition to the April Resolution and in support of HPD's request from City Council Member Gale Brewer; State Senator Eric T. Schneiderman also provided written testimony in opposition to the April Resolution; and

WHEREAS, additionally, certain community members provided written testimony in opposition to the proposed construction; and

WHEREAS, the Board re-opened the case to consider whether to modify its decision and a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, and then to decision on July 13, 2010; and

WHEREAS, at the public hearing on June 15, 2010, the Board voted in favor of reviewing the April Resolution, pursuant to § 1-10(f) of the Board's Rules of Practice and Procedure; and

WHEREAS, accordingly, this resolution supersedes the resolution dated April 20, 2010; and

WHEREAS, a representative of HPD, the Appellant, and the Neighbors provided testimony at the hearing; and

WHEREAS, City Council Member Gale Brewer, a representative of State Assembly Member Linda Rosenthal, a representative of the Coalition for a Livable West Side, a representative of the West 86th Street Neighborhood Association, and a representative of Community Board 7 provided testimony in opposition to the application and in support of HPD's request to modify the Board's decision; and

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

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, during the original hearing process, Board staff reached out to HPD to inquire if it had a direct response to the matters of the appeal; and

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

Procedural History

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

1 The Board notes that the ownership of the property has changed since the issuance of the Final Determination and the commencement of the appeal, but that counsel for the original Appellant is authorized by the new owner to pursue the appeal and has the same interest as the original owner. "Appellant" signifies prior and current owner.

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

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

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

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

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

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

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

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

WHEREAS, after the Court of Appeals decision, the Appellant filed an application at DOB for a new building permit in June 2008; the Appellant represents that a 17-story building has been under DOB review since at least 2000 and that the building complies with all relevant zoning requirements; and

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

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

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

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

Relevant Provisions of the the General Municipal Law and the Deed

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

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

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

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

The Appellant's Primary Argument

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

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

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

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

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

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

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

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

WHEREAS, the Tafnet court held that:

> the duties of the Buildings Commissioner, as set forth in the city charter, deal 'exclusively' with structural and technical matters: the enforcement of the Building Code, the inspection of premises and the review of plans and issuance of permits. . . General living conditions are not within [the Commissioner's] jurisdiction; neither are violations of other laws, civil, or criminal, which may occur within buildings or structures . . . It is improper for the Buildings Commissioner to use revocation of a building permit as punishment for activity outside the scope of his jurisdiction, and which he has no independent knowledge, as a means of effecting policies of other city agencies; and

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

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

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

WHEREAS, GML § 692(4) (Definitions) identifies HPD's authority and states:

> 'Agency'. The officer, board, commission, department, or other agency of the municipality designated by the governing body, or as otherwise provide by law, to carry out the functions vested in the agency under this article or delegated to the agency by the governing body in order to carry out the purpose and provisions of this article, except that in a city having a population of one million or more, the term 'agency' shall mean a department of housing preservation and development; and

WHEREAS, City Charter § 1802(3) (Department of Housing Preservation and Development – Powers and Duties of the Commissioner) includes:

> all functions of the city, and all powers, rights and duties as provided by any federal, state or local law or resolution, relating to slum clearance, slum prevention and urban renewal; neighborhood conservation; prevention and rehabilitation of blighted, substandard, deteriorated or unsanitary areas, and publicly-aided and public housing . . . ; and

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

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

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

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

WHEREAS, the Appellant states that the UDAA Act is similar to programs such as Urban Renewal and those administered by the Empire State Development Corporation, in which publicly-owned property is conveyed to private entities, subject to various restrictions designed to ensure that the property will be redeveloped and used in a way that benefits the surrounding community and the general public and that the UDAA Act is designed to further broad community preservation and redevelopment goals and does not establish technical standards that are within DOB's authority; and

WHEREAS, drawing a parallel to the Urban Renewal program, the Appellant cites to a letter from DOB, dated August 2, 2006, in response to residents' inquiry about the enforcement of Urban Renewal provisions at a site subject to an Urban Renewal Plan and DOB stated that it did not interpret or enforce the noted contract terms and referred the inquiry to HPD; and

WHEREAS, specifically, DOB states that "The Department of Buildings does not interpret or enforce

provisions of the contracts referenced in your letter in its permitting process" and refers the concerned party to HPD, "which is the agency upon which has devolved primary responsibility for overseeing the contracts you have referenced"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Appellant's Alternate Argument

– There was Not a Sufficient Basis for DOB to Issue the Objection

WHEREAS, the Appellant has stated that its primary argument is that DOB lacks the authority to enforce the UDAA Act, but that, if the Board were to disagree, and find that DOB acted appropriately in the subject case, then, it proffers the alternate argument that even if the UDAA Act were within DOB's jurisdiction, there is no basis for the requirement that a new building be low-rise as defined by the Building Code; and

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

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

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

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

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

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

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

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

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

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

WHEREAS, DOB states that a height limitation was not in the Deed because it was HPD's intent that the building would be conserved and not reconstructed; and

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

The Board's Determination

WHEREAS, pursuant to § 1-10(f) of the Board's Rules of Practice and Procedure, the Board may on its own motion review its decision and reverse or modify it provided that "no such review shall prejudice the rights of any person who has in good faith acted thereon before it is reversed or modified"; and

WHEREAS, as noted, the Board, on its own motion at the June 15, 2010 public hearing, voted to review its decision; and

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

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

WHEREAS, the Board notes that there may be instances where DOB has concurrent authority with another agency; and

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

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

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

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

WHEREAS, the Board's conclusion arises from the following: (1) the Appellant states, and the Board agrees, that the UDAA Act is a statute related to policy and process, which can be distinguished from bodies of technical regulations, (2) the Appellant states, and the Board agrees, that unlike in the concurrent jurisdiction examples, DOB would generally not be aware that a project was subject to UDAAP because that is not one of the myriad criteria identified in DOB applications, and (3) the Board finds that it is not clear that DOB consistently reviews and enforces UDAA Act-related criteria in its approval process; and

WHEREAS, specifically, as to the nature of the UDAA Act, the Appellant states, and the Board agrees, that the UDAA Act, which concerns community preservation and redevelopment goals, can be distinguished from bodies of technical regulations such as the Zoning Resolution or Building Code, which are clearly within DOB's jurisdiction; and

WHEREAS, as to DOB generally being aware that a site is subject to UDAAP, it is not among the criteria available in the Buildings Information System and would not be within the scope of DOB's review process; rather, the UDAAP criteria is set forth within a deed established with HPD; and

WHEREAS, as to DOB's practice, DOB has not asserted that it has a method for identifying and reviewing UDAA Act criteria; and

WHEREAS, the Board notes that HPD recognizes that Article 16 of the GML names HPD specifically and identifies it as the agency charged with the responsibility of implementing the UDAA Act, and that HPD states that it has been implementing the UDAA Act for several decades; and

WHEREAS, as to HPD's assertions about procedural efficiency, the Board disagrees that DOB should be recognized as the enforcement agency because it is in a better position than HPD to monitor compliance because, as noted, there is not a mechanism to alert DOB to a project's UDAAP status in the course of its ordinary plan review and the Board finds that HPD would have the ability to oppose a project that does not comport with its deeds prior to the completion of demolition and commencement of new construction; and

WHEREAS, the Board accepts that DOB has broad authority and that it may identify matters during its plan review, which are not generally before it and additionally the Board finds it reasonable for DOB to alert another agency

when it identifies a non-complying condition, pursuant to a construction-related or other regulation; and

WHEREAS, however, the Board agrees with the Appellant that the provisions of the UDAA Act at issue in this appeal are not within the scope of DOB's general enforcement power under the Charter and that, rather, they lie within HPD's jurisdiction as set forth in the Charter and the UDAA Act; and

WHEREAS, the Board's determination is limited to the facts of the subject appeal; the Board acknowledges that there may be UDAA Act, or related provisions, not considered during the course of the subject appeal, that are within DOB's purview pursuant to its Charter power; and

WHEREAS, however, in this instance, DOB does not have authority to enforce the GML or the UDAAP provisions and therefore, the threshold question of jurisdiction is not met; and

WHEREAS, the Board has reviewed the secondary arguments: (1) from the Appellant that the UDAA Act language is unambiguous and does not set forth a height limit for the subject building and (2) from DOB and HPD that the legislative history and case law inform the UDAA Act establish a required height limitation of 75 feet on the subject site; and

WHEREAS, because the Board has determined that DOB does not have the authority to enforce the noted provisions in this instance, and since it finds that it is within HPD's authority, which the Charter has not granted the Board the jurisdiction to review, the Board declines to evaluate the merits of the Appellant's alternate argument, and DOB and HPD's rebuttals, on the question of height restrictions; and

WHEREAS, the Board notes that the Appellant asserts that it will be prejudiced by a modification of the decision, but the Board finds that (1) the Appellant's primary argument in the original appeal was that DOB lacks jurisdiction to enforce the noted provisions of the UDAA Act, (2) the Appellant asserts that the substantive questions on restrictions on the construction have already been answered in another forum, (3) the Board's review of its April Resolution does not constitute a reversal, and (4) the question of prejudice, as set forth in the Rules, is limited to whether or not the Appellant has acted in reliance on the prior decision; since the April Resolution and the modified decision both allow for the Appellant to proceed at DOB, the Board finds the argument about prejudice unpersuasive; and

WHEREAS, the Neighbors, community members, and elected officials raised other concerns including those about notification, a change in ownership of the site, and matters that were beyond the scope of a review of the April Resolution; and

WHEREAS, the Board notes that its Rules do not require notification of neighbors, the Community Board, or elected officials in interpretative appeals and that a change in ownership has not affected the Appellant's standing to pursue the appeal; and

WHEREAS, the Board notes that, although the Neighbors assert that the specifics of the case, involving ongoing litigation, warrants the Board exceeding the requirements of its Rules, they do not establish any basis for such action and the Neighbors concede that the Board has followed its Rules; and

WHEREAS, as noted, the Board does not find the change in ownership of the site from one party with interest in the appeal to another party with interest in the appeal, to have any bearing on the substantive matters before it; and

WHEREAS, accordingly, the Board has not found the supplemental procedural arguments to be availing; and

WHEREAS, the Board concludes that (1) the Board agrees with the Appellant's primary argument that DOB exceeded its authority by enforcing the GML in the subject matter, and (2) since the Board accepts the Appellant's primary argument, it declines from taking a position on the alternate argument, the analysis of which relies on a finding that DOB appropriately exercised its authority in enforcing the GML in the subject matter.

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

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

589-31-BZ

APPLICANT – Eric Palatnik, P.C., for Asha Ramnath, owner.

SUBJECT – Application March 5, 2010 – Amendment pursuant (§11-413) to permit the proposed change of use group from UG16 (Gasoline Service Station) to UG16 (Automotive Repair) with accessory used car sales. R3-2 zoning district.

PREMISES AFFECTED – 159-02 Meyer Avenue, intersection of Mayer Avenue, 159th Street, Linden Boulevard, Block 12196, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

558-71-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for WB Management of NY LLC, owner.

SUBJECT – Application March 26, 2010 – Amendment to a previously granted Variance (§72-21) to permit the change of a UG6 eating and drinking establishment to a UG6 retail use without limitation to a single use; minor reduction in floor area; increase accessory parking and increase to the height of the building façade. R3-1 zoning district.

PREMISES AFFECTED – 1949 Richmond Avenue, east side of Richmond Avenue at intersection with Amsterdam Place, Block 2030, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to August 17, 2010, at 10 A.M., for continued hearing.

914-86-BZ
APPLICANT – Stuart A. Klein, Esq., for Union Temple of Brooklyn, owner; Eastern Athletic, Incorporation, lessee.
SUBJECT – Application March 31, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (*Eastern Athletic*) which expired on May 17, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on November 12, 1998; Amendment to the interior layout and the hours of operation; Waiver of the Rules. R8X zoning district.
PREMISES AFFECTED – 1-19 Eastern Parkway, north side of Eastern Parkway, between Plaza Street, east and Underhill Avenue, Block 1172, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #8BK
APPEARANCES –
For Applicant: Abigail Patterson.

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

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

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

147-08-BZY
APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.
SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior zoning district. R5 zoning district
PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES – None.
ACTION OF THE BOARD – Application dismissed.
THE VOTE TO DISMISS –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application under ZR §11-331 to renew a building permit and extend the time to complete construction of a three-story two-family home in accordance with the permit for New Building Permit No. 410026975 (the "NB Permit") and with the proposed work under unapproved Alteration Application No. 410049594 (the "Alteration Application"); and

WHEREAS, the case was filed on May 23, 2008; and

WHEREAS, the Board notes that the NB Permit proposed the construction of a three-story two-family home at

95-04 Allendale Street, directly abutting and sharing the western wall of an existing two-story two-family detached building with a non-complying eastern side yard located at 95-06 Allendale Street; the Alteration Application proposed the removal of a portion of 95-06 Allendale Street to provide a complying side yard; and

WHEREAS, the Department of Buildings ("DOB") submitted a letter dated November 26, 2008, stating that the NB Permit was unlawfully issued because it relied on the proposed work under the Alteration Application in order to satisfy the side yard requirement, and the Alteration Application was not approved and permitted prior to the April 30, 2008 zoning text amendment; and

WHEREAS, on February 24, 2009, a public hearing was held on this application after due notice in The City Record; at the hearing the applicant agreed to meet with DOB to attempt to resolve outstanding issues with the NB Permit, and a continued hearing was scheduled for April 7, 2009; and

WHEREAS, the applicant submitted a letter dated March 30, 2009, stating that it had not been able to meet with DOB to resolve the issues related to the application; and

WHEREAS, DOB submitted a letter dated April 1, 2009, stating that it would provide the applicant with the opportunity to submit construction documents necessary to cure the yard objection, at which point DOB may approve the Alteration Application and rescind its revocation of the NB Permit, but that the NB Permit would remain lapsed unless and until the Board granted the applicant's vested rights application; and

WHEREAS, on April 7, 2009, the Board adjourned the hearing to May 12, 2009; on May 12, 2009 the hearing was again adjourned until June 16, 2009; and

WHEREAS, on June 16, 2009, a public hearing was held on this application wherein the applicant was given until August 11, 2009 to submit responses to outstanding issues with the application, and a continued hearing was set for August 25, 2009; and

WHEREAS, the applicant submitted a letter dated August 17, 2009, stating that it was submitting a subdivision proposal at DOB to resolve the objections to the application, and requesting an adjournment of the August 25, 2009 hearing in order to amend its application and secure subdivision approval from DOB; and

WHEREAS, on August 25, 2009, the Board adjourned the hearing to November 24, 2009; and

WHEREAS, the applicant submitted a letter dated November 12, 2009, requesting an adjournment of the November 24, 2009 hearing in order to resolve DOB's objections to its subdivision proposal; and

WHEREAS, on November 24, 2009, the Board adjourned the hearing to February 2, 2010; and

WHEREAS, the applicant submitted a letter dated January 20, 2010, stating that DOB approved its proposed subdivision, but requested an adjournment of the February 2, 2010 hearing in order to perform the work associated with the approved subdivision; and

WHEREAS, on February 2, 2010, the Board adjourned the hearing to June 22, 2010; and

WHEREAS, the applicant submitted a letter dated May 5, 2010, stating that, due to financial constraints, the owner had not moved forward with the required paperwork or demolition work related to its revised proposal and requesting that the Board take the case off its hearing calendar; and

WHEREAS, the Board notes that there have been no hearings on the subject application since June 16, 2009, and that it has repeatedly adjourned scheduled hearings at the applicant's request to provide the applicant with additional time to resolve outstanding issues at DOB; and

WHEREAS, the Board further notes that the subject application is a request to continue construction pursuant to ZR § 11-331, which permits the Board to renew a building permit and authorize a six-month extension of time to complete the required foundations; however, pursuant to ZR § 11-332, construction must be completed and a certificate of occupancy obtained within two years of the Rezoning Date; and

WHEREAS, the Board notes that the Rezoning Date was on April 30, 2008, and therefore even if the Board granted the subject application, the two year extension of time to complete construction has already expired; and

WHEREAS, on June 17, 2010, Board staff informed the applicant that, due to a failure to prosecute the application, the Board would put the case on the July 13, 2010 dismissal calendar; and

WHEREAS, at the June 22, 2010 public hearing, the Board placed the matter on the July 13, 2010 dismissal calendar; and

WHEREAS, the applicant did not appear at the July 13, 2010 hearing; and

WHEREAS, accordingly, due to the applicant's lack of good faith prosecution of this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 147-08-BZY is hereby dismissed for lack of prosecution.

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

283-09-BZY thru 286-09-BZY

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

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

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

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – 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 under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for four three-story three-family residential buildings currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on March 9, 2010, after due notice by publication in *The City Record*, with continued hearings on April 20, 2010, May 25, 2010 and June 22, 2010, and then to decision on July 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, the adjacent neighbors, represented by counsel, provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"), with the following primary concerns: (1) construction was performed at the site subsequent to the filing of the subject application; (2) the status of 90-22 176th Street, which did not vest its foundations, is not clear; (3) the proposed construction will cause damage to the surrounding properties; (4) a portion of the proposed development encroaches on the neighboring property and the applicant has failed to remove the encroachment as required by court order; and (5) the proposed buildings are not compatible with the surrounding area; and

WHEREAS, the subject site is located on the west side of 176th Street, between 90th Avenue and Jamaica Avenue, within an R4-1 zoning district; and

WHEREAS, the subject site has a width of approximately 67 feet, a depth of approximately 174 feet, and a lot area of approximately 11,635 sq. ft.; and

WHEREAS, the site consists of five tentative tax lots: Lot 60 (90-18 176th Street); Lot 62 (90-22 176th Street); Lot 160 (175-19 Lauren Court); Lot 161 (175-21 Lauren Court); and Lot 162 (175-23 Lauren Court); and

WHEREAS, as to the Opposition's concerns regarding 90-22 176th Street (Lot 62), the Board notes that it was the subject of a prior application pursuant to BSA Cal. No. 230-07-BZY, in which the Board denied the applicant's request for an extension of time to complete the foundation of a three-story residential building pursuant to ZR § 11-331 based on a determination that the subject permit was invalid; and

WHEREAS, accordingly, 90-22 176th Street (Lot 62) is not a part of the subject application; and

WHEREAS, the site is proposed to be developed with four three-story three-family residential buildings (the "Buildings"); and

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

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on June 28, 2007, the Department of Buildings ("DOB") issued New Building Permit Nos. 402568226-01-NB and 402568459-01-NB, and on July 3, 2007, DOB issued New Building Permit Nos. 402568440-01-NB and 402568468-01-NB (collectively, the "New Building Permits"), permitting construction of the Buildings; and

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

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

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

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

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

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

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

requirement has been met."; and

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

WHEREAS, the record indicates that the New Building Permits were lawfully issued for the proposed development to the owner by DOB prior to the Enactment Date; and

WHEREAS, on April 25, 2008, DOB issued a Notice of Objections for the site with the intent to revoke the subject permits; and

WHEREAS, on February 4, 2009, DOB cleared all objections and approved the R6 zoning for the subject site upon a finding that the foundations were installed prior to the zoning change; and

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

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

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

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

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

WHEREAS, the Opposition argues that work continued at the site until November 2009, and construction again took place in April and May 2010, subsequent to the two-year time limit to complete construction which expired on September 10, 2009; and

WHEREAS, the Board directed the applicant to cease any construction at the site and to ensure that no construction is performed prior to the reinstatement of the New Building Permits; and

WHEREAS, in response, the applicant acknowledges that construction occurred on the site subsequent to the expiration of the two-year time limit, but represents that since the time of the subject application in October 2009, the delivery of building materials is the only activity that has occurred on the site; and

WHEREAS, the applicant provided evidence that complaints made by neighbors to DOB resulted in inspections of the site, and that all complaints regarding illegal work since October 2009 were dismissed upon DOB's inspection; and

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

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit and until September 10, 2009 includes: 100 percent of excavation and backfill; 100 percent of the footings and foundation; 100 percent of the waterproofing; 100 percent of the boring for percolation tests; 75 percent of the drywell installation; and 43 percent of the water main connection, backflow exemption and sprinkler design; and

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

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

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are $114,105, or approximately 11 percent of the $1,081,623 cost to complete; and

WHEREAS, as noted, the applicant has submitted a breakdown of the construction costs by line item and percent complete; construction contracts; invoices; and copies of cancelled checks; and

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

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

WHEREAS, as to the Opposition's concern that the proposed construction will cause damage to the adjacent properties, the Board notes that construction must proceed in accordance with all relevant Building Code requirements related to safe construction; and

WHEREAS, as to the Opposition's argument regarding the encroachment onto the neighboring property, the applicant states that the encroachment that must be removed in accordance with the court settlement relates to underpinning, and that the owner intends to remove any underpinning encroachment once construction resumes at the site; and

WHEREAS, the Board notes that the aforementioned concerns regarding property damage and encroachment are not within the purview of the analysis for a vested rights application and it is not within the Board's jurisdiction to resolve disputes between property owners; and

WHEREAS, the Board further notes that the Opposition's claims were appropriately brought before a civil court, and it is similarly not within the purview of the vested rights analysis to enforce the court's stipulation; and

WHEREAS, the Opposition also argues that the application should be denied because the Buildings will be

incompatible with the surrounding community; and

WHEREAS, the Board understands that the Buildings do not comply with the new zoning parameters, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-332, the owner's property rights may not be negated based on concerns about neighborhood character; and

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit Nos. 402568226-01-NB, 402568459-01-NB, 402568440-01-NB and 402568468-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on July 13, 2012.

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

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 – 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.

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

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the site has obtained the right to complete four two-story single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in The City Record, with a continued hearing on June 8, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, citing concerns that the current owner purchased the property after the zoning change and therefore any hardship is self-created; and

WHEREAS, the adjacent neighbors, represented by counsel, provided written and oral testimony in opposition to the application (hereinafter, the "Opposition"), with the following primary concerns: (1) the underlying building permits are invalid; (2) a large portion of the construction and expenditures relied upon by the applicant occurred after the date that the site was rezoned; (3) there is insufficient documentation of the expenditures made by the applicant; (4) the owner did not act in good faith; (5) there are outstanding objections which have not been satisfied; and (6) construction at the site was done illegally because the owner did not obtain necessary insurance nor conduct proper inspections; and

WHEREAS, the applicant proposes to develop the subject site with four two-story single-family homes; and

WHEREAS, the subject site was formerly located within an R2 zoning district; and

WHEREAS, however, on April 12, 2005 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Bayside Rezoning, which rezoned the site to R1-2; and

WHEREAS, the applicant represents that the development complies with the former R2 district parameters, specifically the front yard depth was permitted; and

WHEREAS, because the site is now within an R1-2 district, the development does not comply with the minimum front yard depth; and

WHEREAS, the applicant notes that the rezoning resulted in the subject front yard non-compliance for only two of the four homes (39-39 223rd Street and 223-19 Mia Drive), but that the subject application is necessary for all four homes because the site is a single zoning lot and no certificates of occupancy can be issued until the zoning objections are removed; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, on February 18, 2004, the Department of Buildings ("DOB") issued New Building Permit No. 401762017-01-NB; on March 22, 2004, DOB issued New Building Permit Nos. 401762026-01-NB and 401762035-01-NB; and on March 24, 2004, DOB issued New Building Permit No. 401762044-01-NB (collectively, the "New Building Permits"), permitting construction of the subject homes; and

WHEREAS, the Opposition argues that the New Building Permits were invalid at the time they were issued due to a number of alleged fatal defects related to open space, wall height, front and side yards, and separation between buildings; and

WHEREAS, in response, the applicant notes that DOB issued a letter dated March 18, 2010 stating that the New Building Permits were lawfully issued, authorizing construction of the proposed homes prior to the Rezoning Date,

and that DOB issued a second letter dated June 7, 2010, in response to concerns raised by the Opposition, which reiterated DOB's determination that the New Building Permits were lawfully issued; and

WHEREAS, the Opposition further argues that the New Building Permits are invalid because three detached garages on the site were overbuilt and impinged on open space requirements at the time they were issued, thereby rendering the entire project illegal; and

WHEREAS, in response, the applicant states that the garages were filed under separate New Building applications and are not a part of this application, however, the applicant nonetheless submitted a reconsideration granted by the DOB Borough Commissioner, reflecting that the objections related to the size of the garages were resolved on August 17, 2009; and

WHEREAS, the Opposition also contends that the New Building Permits are invalid because DOB has issued numerous objections for the New Building Permits and the applicant has failed to demonstrate that the outstanding objections have been satisfied; and

WHEREAS, in response, the applicant submitted a letter from DOB dated May 13, 2010, stating that all substantive objections have been successfully resolved by the applicant; and

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

WHEREAS, the Board notes that ZR § 11-31(c)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on a single zoning lot, as a "major development"; and

WHEREAS, for a "major development," ZR § 11-331 permits an extension of time to complete construction and obtain a certificate of occupancy upon a finding that the foundations for at least one building of the development had been completed prior to the Rezoning Date; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained permits for the development and had completed foundation work for at least one of the homes, such that the right to continue construction was vested by DOB pursuant to ZR § 11-331; and

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

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that although construction continued, certificates of occupancy were not obtained within two years of the Rezoning Date; and

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

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permits pursuant to ZR § 11-332 before the deadline of May 12, 2007 and is therefore requesting additional time to complete construction and obtain certificates of occupancy under the common law; and

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

WHEREAS, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

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

WHEREAS, the Opposition argues that the applicant did not act in good faith because it did not acquire ownership of the site until after the Rezoning Date and therefore had knowledge of the rezoning; and

WHEREAS, specifically, the Opposition states that as of the Rezoning Date, the owner of the site was 63 Drive Corporation, and ownership was not transferred to the current owner, Mia & 223 Management Corporation, until October 12, 2006; and

WHEREAS, in response, the applicant provided evidence that both the prior owner, 63 Drive Corporation, and the current owner, Mia & 223 Management Corporation, are owned entirely by the same individual, and therefore the owner acted in good faith reliance on the New Building Permits; and

WHEREAS, the Board notes that a site's ownership is not a relevant element in the vested rights analysis, as a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D. 86 (2d Dep't 1930); see also Elsinore Prop. Owners Ass'n v. Morwand Homes; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, the Opposition further argues that it would be inequitable to allow the applicant to derive the benefits of the change in ownership from 63 Drive Corporation to Mia & 223 Management Corporation without acknowledging that the latter corporation took ownership with full knowledge of the downzoning and thus cannot claim vested rights; and

WHEREAS, because the Board is an administrative body, rather than a court, it is not empowered to grant equitable

relief (see People ex rel. New York Tel. Co. v. Pub. 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 Stds. and Apps, 45 N.Y.2d 560, 565 (1978)), and therefore cannot consider equitable arguments in connection with an application to vest a building permit under the common law; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed foundation work for at least one of the homes prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that as of April 12, 2007, the applicant completed all of the foundations, constructed the superstructures of each building, constructed exterior walls, and installed staircases, electrical wiring, windows, roofing, plumbing, exterior finishes, and interior finishes; and

WHEREAS, the applicant states that construction of the homes is entirely completed, and that the only work remaining is to obtain any outstanding DOB sign-offs and certificates of occupancy; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site; bank statements, invoices; work orders; and copies of checks; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to April 12, 2007 and the applicant represents that its analysis is based on work performed up to that date; and

WHEREAS, the Opposition submitted documents in support of its claim that the applicant did not perform controlled subgrade inspections at the site, as required by Building Code § 27-723, and contends that therefore the foundation work cannot be considered complete and the project cannot be vested; and

WHEREAS, the Board does not make any determination on the structural sufficiency of the foundations at the site, and notes that DOB reviews the sufficiency of the foundations as a condition prior to final approval and issuance of a certificate of occupancy; and

WHEREAS, accordingly, the Board defers to DOB's determination; and

WHEREAS, the applicant states that even if there are issues with the sufficiency of the foundations, such that a significant portion of the concrete poured at the site and/or all subsequent work relying on the foundations cannot be considered in the analysis, the applicant would still satisfy the common law vested rights criteria based solely on the remaining foundation work and related expenditures; and

WHEREAS, the Board agrees that the applicant has provided sufficient evidence to establish that substantial construction has been undertaken and expenditures made such that the applicant has established a vested right to continue construction under the common law even if there are issues with portions of the foundation, such that DOB's initial vesting determination pursuant to ZR § 11-331(b) would not have been made; and

WHEREAS, the Opposition argues that a large portion of the construction and expenditures included in the subject application occurred after the Rezoning Date, and therefore must be discounted from the vested rights analysis; and

WHEREAS, in response, the applicant notes that ZR § 11-331(b) authorizes construction to be continued as-of-right for an additional two years beyond the Rezoning Date when, in the case of a major development, the foundations for at least one building of the development have been completed prior to the Rezoning Date; and

WHEREAS, the applicant states that DOB permitted the subject construction to continue as-of-right for an additional two years pursuant to ZR § 11-331(b), and therefore the Board should consider the construction and expenditures that occurred between April 12, 2005 and April 12, 2007 in addition to the work and expenditures before the Rezoning Date; and

WHEREAS, the Board finds that, based on DOB's determination that the applicant satisfied ZR § 11-331(b), the effective date for the purposes of calculating substantial construction and expenditures in the vested rights analysis is extended two years from the Rezoning Date, to April 12, 2007; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work was substantial enough to meet the guideposts established by case law; 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 the owner has expended $1,096,379 or 72 percent, including hard and soft costs and irrevocable commitments, out of $1,509,010 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted bank statements, invoices, and copies of checks; and

WHEREAS, the Opposition argues that the applicant has not provided sufficient documentation of the claimed expenditures, noting that much of the evidence consists of copies of checks which have not been signed or cancelled and satisfactions of liens which are unsigned and unsworn; and

WHEREAS, in response, the applicant submitted bank statements which correspond to $583,163 worth of the copies of checks which were not fully executed, and states that some of the copies of checks and lien releases are not fully executed because such records were unavailable given the six-year gap between the issuance of the permits and the commencement of this application; and

WHEREAS, the applicant notes that in addition to the bank statements it has submitted copies of signed checks or other financial documentation for an additional $355,886 in

expenditures, and therefore has accounted for $939,049 out of its claimed expenditures of $1,096,379; and

WHEREAS, the applicant represents that the bank statements, in conjunction with the copies of signed checks, invoices submitted for work completed, the absence of construction liens, and the tangible evidence of the work completed at the site, are sufficient evidence to establish that substantial expenditures were incurred by the applicant; and

WHEREAS, the Board notes that even if it could only rely on the bank statements as evidence of the applicant's expenditures, the $583,163, or 39 percent of the $1,509,010 budgeted for the entire project, would still be sufficient to establish that substantial expenditures have been made; and

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

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

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

WHEREAS, the applicant states that if vesting were not permitted, it would result in the demolition of the front five feet of the two homes affected by the rezoning (39-39 223rd Street and 223-19 Mia Drive), including removal of the front load-bearing walls, five feet of the load-bearing side walls, and the front five feet of the pitched roofs; and

WHEREAS, the applicant states that removal of the front five feet of these homes would result in the need to construct new foundations to support the new front load-bearing walls that will be relocated five feet deeper into the site; the need for temporary support of the first story, second story, and roof during the demolition and rebuilding of the load bearing walls; and the need to gut and rebuild substantial portions of the homes' interiors; and

WHEREAS, the applicant represents that demolishing portions of the two affected homes and rebuilding them to comply with the rezoning would cost a total of approximately $1,055,000; and

WHEREAS, the applicant states that approximately 795 sq. ft. of floor area would be lost in the two homes affected by the rezoning, as a result of the need to remove five feet along the 53-ft. width of each home; and

WHEREAS, the applicant represents that the reduction in floor area would result in an additional loss of approximately $715,500 in sellable floor area; and

WHEREAS, the Board agrees that the need to re-design, the expense of demolition and reconstruction, and the actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Opposition argues that vested rights should be denied in the instant case because the applicant and its contractors did not have liability insurance in place as required by the § 27-204(b) of the Building Code; and

WHEREAS, the Board notes that the issue of liability insurance is properly within the purview of DOB and is unrelated to the common law vested rights determination; however, the applicant nonetheless submitted a letter from DOB in response to the Opposition, which stated that the applicant satisfied DOB's insurance requirements and the project had general liability insurance in place as of February 18, 2004; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit Nos. 401762017-01-NB, 401762026-01-NB, 401762035-01-NB, and 401762044-01-NB, 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 two years from the date of this grant.

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

298-09-A

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

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

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

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for deferred decision.

10-10-A

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

SUBJECT – Application January 25, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district. R6 zoning district.

PREMISES AFFECTED – 1882 East 12th Street, west side, of East12th Street, 75' north of Avenue S, Block 6817, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for deferred decision.

43-08-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street contrary to the General City Law Section 35. R2A zoning district.
PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Calvin Wong.

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

3-10-A & 4-10-A

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

ACTION OF THE BOARD – Laid over to August 24, 2010, at 10 A.M., for adjourned continued.

67-10-A

APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Eileen and James Conrad, lessee.
SUBJECT – Application May 4, 2010 – Proposed reconstruction and enlargement of an existing single-family dwelling and the proposed upgrade of the existing non-conforming private disposal system within the bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 72 Bedford Avenue, west side of Bedford Avenue within the intersection of mapped 12th Avenue and Beach 204th Street, Block 16350, Lot p/o 300, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

71-10-A thru 84-10-A

APPLICANT – Eric Palatnik, P.C., for Brighton Street, LLC, owners.
SUBJECT – Application May 10, 2010 – Appeal seeking a determination that the owner has acquired a vested right to complete construction under the prior R3-2 zoning district. R3-1 zoning district.
PREMISES AFFECTED – 102-118 Turner Street and 1661 to 1669 Woodrow Road, between Crabtree Avenue and Woodrow Road, Block 7105, Lots 181 thru 188 and 2 thru 8, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Eric Palatnik, Coppottelli Matasalla.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

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

ZONING CALENDAR

160-08-BZ
CEQR #08BSA-092K
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 R. Angelino.
For Opposition: Ronald J. Dillon.
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 June 3, 2008, acting on Department of Buildings Application No. 310139025, reads in pertinent part:

> "The proposed commercial storage of motor vehicles (bus storage) sales and repairs Use Group 6 & 16 (replacing BSA Cal. Number 841-76-BZ and 78-79-BZ) in an R4 zoning district is not permitted as per Section 22-00 of the New York City Zoning Resolution and is referred to the BSA for a variance;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, March 2, 2010, April 13, 2010, May 25, 2010 and June 15, 2010, and then to decision on July 13, 2010; and

WHEREAS, the site 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 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided written and oral testimony in opposition to this application (hereinafter, the "Opposition"), with the following primary concerns: (1) the site is not unique; (2) the prior variances expired and therefore commercial/manufacturing use is not grandfathered on the site; (3) the site value is overpriced and a conforming development could provide a reasonable return; and (4) the proposal constitutes a self-created hardship; and

WHEREAS, several members of the community testified in support of the application; and

WHEREAS, the subject site comprises the entirety of Block 4527, bounded by Stanley Avenue to the north, Euclid Avenue to the east, Wortman Avenue to the south, and Fountain Avenue to the west, within an R4 zoning district; and

WHEREAS, the site is irregularly shaped, with approximately 207'-10" of frontage on Stanley Avenue, 500'-0" of frontage on Euclid Avenue, 70'-0" of frontage on Wortman Avenue, and 502'-11" of frontage on Fountain Avenue, and a lot area of 77,729 sq. ft.; and

WHEREAS, on June 7, 1977, under BSA Cal. No. 841-76-BZ, the Board granted a variance over a portion of the subject site consisting of Lots 61, 64, 77, 78, 80, 113 and 120, to permit the enlargement in area of an existing automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, for a term of ten years; and

WHEREAS, on October 30, 1979, under BSA Cal. No. 78-79-BZ, the Board granted a variance to permit the enlargement in area of the existing automobile wrecking and dismantling establishment approved pursuant to BSA Cal. No. 841-76-BZ, onto Lots 94 and 110 (current Lot 94); and

WHEREAS, subsequently, the grants were amended and the terms extended until their expiration on June 7, 2007; and

WHEREAS, as to the Opposition's argument that the prior variances expired and commercial/manufacturing use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the aforementioned variances related to the entirety of Block 4527 except for a 100'-0" by 190'-0" parcel at the northeast corner of the subject site (the "Northeast Parcel"); and

WHEREAS, the applicant further states that the subject site, including the Northeast Parcel, is currently occupied as an open commercial storage for bus parking, with motor vehicle repairs and accessory fuel storage (Use Group 16); and

WHEREAS, the applicant notes that the site is occupied by the operations of the L & M Bus Corporation, which provides school bus transportation for the Department of Education, Interagency Transportation Solutions, and the

Department of Homeless Services, and employs 275 people predominantly from the surrounding neighborhood; and

WHEREAS, the applicant proposes to legalize the current use of the site as open commercial storage for bus parking, with repairs and accessory fuel storage; and

WHEREAS, commercial use is not permitted in the subject R4 zoning district, thus the applicant seeks a use variance to permit the subject Use Group 16 uses; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 28-212.1, and that the applicant executed a stipulation with the Department of Buildings ("DOB"), dated November 21, 2008, which allows for operation of the site while the applicant pursues the subject application for a variance to legalize the existing conditions; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the irregular shape of the site; (2) the existing subsurface soil conditions at the site; (3) the history of development on the site and associated contamination; (4) the site's location on a heavily-trafficked thoroughfare; and (5) the preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, as to the site's irregular shape, the applicant states that the site has an irregular trapezoidal shape, with 207'-10" of frontage on Stanley Avenue, 500'-0" of frontage on Euclid Avenue, 70'-0" of frontage on Wortman Avenue, and 502'-11" of frontage on Fountain Avenue; and

WHEREAS, the applicant states that the site has a maximum width of approximately 225'-0" on the northern portion of the site and a minimum width of 70'-0" on the southern portion of the site; and

WHEREAS, the applicant submitted Sanborn maps reflecting that the majority of the surrounding block and lot configurations are more regular than the subject site; and

WHEREAS, specifically, the applicant represents that the typical through block in the R4 zoning district to the east of the subject site has a uniform width of approximately 200'-0"; and

WHEREAS, the applicant states the irregular width of the subject site restricts residential development as compared to the typical 200'-0" wide through block; and

WHEREAS, in support of its argument that the irregular and unique configuration of the block constrains the development of the site to its full density, the applicant submitted plans reflecting that a rectangular-shaped site with an equivalent lot area could provide 32 two-family homes, as compared to the 28 two-family homes that can be constructed on the subject site due to the inclusion of required yards and setbacks; and

WHEREAS, during the course of the hearing process, the Board raised concerns that the Northeast Parcel was not subject to the prior variances on the site, and that when it is separated from the variance sites it is a regular site in terms of its size and shape and therefore does not suffer any hardship; and

WHEREAS, in response, the applicant states that excluding the Northeast Parcel from the subject site would create an even more irregular configuration on the remainder of the site, and as such, its inclusion is both rational and practical in order to alleviate some of the hardship on the site; and

WHEREAS, as to the soil conditions at the site, the applicant states that the site has a high water table and contains a significant amount of urban fill that requires the use of pile foundations for the construction of each home under a complying residential development scenario; and

WHEREAS, the applicant submitted a report from a geotechnical consultant (the "Geotechnical Report") along with area wide historical maps showing flood plains which reflect that a historic creek ran directly through the subject site, and historic and urban fill materials were deposited on the site to an average depth of nine to ten feet to raise it to the current elevation, which is approximately four to six feet above the adjacent sites; and

WHEREAS, the Geotechnical Report also reflects that groundwater was encountered at the site at a depth of nine to ten feet; and

WHEREAS, the Geotechnical Report states that the presence of existing fill materials can lead to excessive total and differential settlement, and recommends the use of pile foundations which would add an additional cost of approximately $27,000 for each home; and

WHEREAS, the applicant states that the need for pile foundations is unique to the subject site, and submitted data from the Department of Buildings indicating that most of the recent residential developments in the surrounding area were not constructed on pile foundations; and

WHEREAS, specifically, the applicant provided evidence that only three out of 20 of the most recent residential developments in the area were constructed with pile foundations; and

WHEREAS, in addition to the need for pile foundations, the Geotechnical Report states that the site will require additional dewatering and earthwork considerations due to the unique soil conditions on the site; and

WHEREAS, the applicant represents that the aforementioned soil conditions are unique to the subject site, as adjacent properties have never been historically filled, and the path of the creek was generally in a north-south direction, such that it did not extend to any of the sites to the east which are located in the R4 zoning district; and

WHEREAS, as to the history of development on the site, the applicant states that portions of the subject site have been occupied by commercial and manufacturing uses since at least 1937, similar to the uses found within the M1-1 zone located across Fountain Avenue to the west of the site; and

WHEREAS, in support of this statement, the applicant has submitted certificates of occupancy and Sanborn Maps evidencing the prior commercial and manufacturing uses of the site; and

WHEREAS, the applicant states that the commercial history of the site is further evidenced by the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ, which permitted the continued use and expansion of the existing automobile wrecking yard and sale of new and used cars and parts with accessory automobile repairs throughout the

subject site, with the exception of the Northeast Parcel; and

WHEREAS, the applicant represents that the long term use of the site for manufacturing uses is evidence that residential uses are not viable; and

WHEREAS, the applicant further represents that the history of manufacturing uses at the site has potentially resulted in contamination on the site that would require the excavation and disposal of soils that would increase the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that the urban fill material is contaminated by a number of hazardous materials; and

WHEREAS, the applicant states that, due to the contamination, the soil must be remediated before any residential development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation prepared by its financial analyst, which reflects a remediation cost for the entire site of approximately $600,000, and approximately $201,000 for the Northeast Parcel alone; and

WHEREAS, during the course of the hearing process, the Board questioned whether contamination of the Northeast Parcel should be considered as part of the site's hardship since it was never subject to the prior variances on the site, and any contamination of the Northeast Parcel may have been self-created; and

WHEREAS, in response, the applicant states that although the Northeast Parcel was not subject to the variances on the other portions of the site, the Sanborn maps submitted to the Board reflect that it nonetheless has a history of commercial use dating back to at least 1951, which pre-dates the current zoning scheme and the variances granted on the remainder of the site; and

WHEREAS, the applicant further states that the soil boring samples which evidenced high levels of contaminants that require remediation were taken from within the Northeast Parcel; and

WHEREAS, as to the site's location, the applicant states that Fountain Avenue is a 100-ft. wide, heavily-trafficked thoroughfare, and that there is a preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, the applicant represents that the high volume of commercial traffic and the resultant noise on Fountain Avenue due to the adjacent M1-1 zoning district inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial and manufacturing uses in the surrounding area diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1 zoning districts, and the M1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses, which makes the proposed site less desirable for residential use; and

WHEREAS, the applicant also provided a list of several large commercial and manufacturing uses located in the surrounding area; and

WHEREAS, the Board does not find the location on Fountain Avenue or the surrounding uses to be unique conditions to the site, noting that Fountain Avenue and the surrounding blocks have residential uses, some of which were developed recently, suggesting that the location and surrounding uses do not directly affect the use of the site for residential development; and

WHEREAS, however, the Board finds that a conforming development of the site in strict compliance with the Zoning Resolution is not feasible due to the constraints the irregularity of the site places on maximizing the density and FAR on the site, in combination with the need to offset additional construction costs associated with the pile foundations and soil remediation; and

WHEREAS, accordingly, the Board finds that the irregular shape of the subject lot, its history of development, and its unique soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed: (1) a conforming residential development with 16 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; and (3) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, at hearing, the Board directed the applicant to revise the conforming residential scenario to maximize the number of dwelling units and floor area on the site, and to analyze an alternative with conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed: (1) a conforming residential development with 28 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; (3) the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and (4) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

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

WHEREAS, specifically, the feasibility study showed

that even if the Northeast Parcel were not included within the subject site, conforming residential development would still not be feasible on the Northeast Parcel due to costs associated with the pile foundation and remediation costs; and

WHEREAS, the applicant also submitted an analysis of a regular rectangular-shaped site with an equivalent lot area to the subject site that could accommodate 32 two-family homes and provide a reasonable return, which showed that but for the irregular shape of the site, conforming residential development would be able to overcome the additional costs associated with the pile foundations and soil remediation; and

WHEREAS, during the course of the hearing process, the Board questioned the financial analysis with regards to the site value, revenues, and cost of construction; and

WHEREAS, the Board notes that the financial consultant provided responses that addressed each issue to the satisfaction of the Board; and

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

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

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

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to the west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1-1 zoning districts, and the M1-1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses; and

WHEREAS, the applicant also listed a number of large commercial and manufacturing uses located in the surrounding area, including the Brooklyn Union Gas Gate Station located two blocks south of the site; the Department of Sanitation building located less than one-half mile from the site; and the United States Postal Service building located 11 blocks from the site; and

WHEREAS, the applicant notes that a portion of the subject site has been occupied commercially since at least 1937, and the majority of the site was occupied since 1979 by an automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, pursuant to the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ; and

WHEREAS, the applicant submitted a report from the Department of City Planning which discusses the decline of the residential market in the surrounding area, as well as research conducted by the Furman Center reflecting a significant increase in foreclosures; the applicant states that no new work permits have been issued by the Department of Buildings for the construction of new homes in the surrounding area since 2005; and

WHEREAS, the applicant submitted a letter from the Department of Transportation ("DOT") dated October 5, 2009, which states that the proposed action will not result in significant traffic impacts; and

WHEREAS, at hearing, the Board raised concerns with the existing use and operation of the site and its impact on nearby residential uses, noting that the existing site conditions did not satisfy the finding required to be made under ZR § 72-21(c); and

WHEREAS, the Board directed the applicant to provide an operational plan and site improvements that will minimize the impact of the proposed development on the surrounding residential uses; and

WHEREAS, as to its operational plan, the applicant states that it has reduced the number of buses operating on the site from approximately 165 to 125, including buses awaiting repair, buses undergoing bi-annual inspections, and buses on call; and

WHEREAS, the applicant further states that it has limited activities on the site to the storage and dispatch of the 125 buses, and minor repairs including oil changes and changing tires and light bulbs; and

WHEREAS, the applicant states that 20 parking spaces have been designated for employee parking on the site; the applicant represents that 20 spaces are sufficient for its 275 employees because the majority of employees walk to work or take the subway or bus and the company provides a shuttle service to and from the subway and bus stations to encourage use of public transportation among its employees; and

WHEREAS, the applicant further states that the internal circulation on the site has been improved through the creation of one contiguous site with an internal pathway to the Wortman Avenue portion of the site, permitting buses to reach the repair shop and fuel pump portion of the site without exiting the site on Wortman Avenue and re-entering on Fountain Avenue; and

WHEREAS, the applicant states that all access to the site has been consolidated with ingress and egress at the two Fountain Avenue curb cuts facing the manufacturing zoned blocks, and the three existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue will be closed, thereby eliminating all curb cuts facing residentially zoned blocks; thus, all of the bus operation on the site will be consolidated, and the traffic will be reduced along with the presence of buses on the three residentially zoned blocks opposite the site; and

WHEREAS, the applicant notes that the hours of operation for the buses at the site will be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; the hours of operation for the repair shop will be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.; and

WHEREAS, as to the site improvements, the applicant submitted a beautification plan, which includes: (1) removal of the second story of the two-story storage shed located along Euclid Avenue; (2) painting the metal repair structures on the

site; (3) the installation of a new chain link fence with a height of eight feet around the perimeter of the entire site, with privacy slats installed throughout the fencing; (4) the planting of 44 new street trees and 172 new evergreen trees around the perimeter of the site; and (5) the installation of new sidewalks and tree pits, each with a width of four feet, on Stanley Avenue, Euclid Avenue and Wortman Avenue; and

WHEREAS, the Board notes that the implementation of the aforementioned improvements to the operational plan and site conditions is necessary in order for the applicant to satisfy ZR § 72-21(c); and

WHEREAS, as noted above, the current site conditions do not satisfy ZR § 72-21(c); thus, the Board finds it appropriate to condition the resolution on the implementation of the noted improvements to the operational plan and the site conditions and to set a timetable for the implementation of such improvements; and

WHEREAS, the Board requires the following schedule for the implementation of the noted site improvements: (1) the revised hours of operation, parking layout and internal circulation at the site will be implemented immediately upon the Board's approval of the subject variance application; (2) the removal of the second story of the storage shed and the painting of the metal repair structures will be completed by September 15, 2010; (3) the new sidewalks, tree pits, and planting strips will be installed by April 15, 2011; (4) the new fencing and slats will be installed by May 15, 2011; and (5) the proposed landscaping and the planting of street trees will be completed by July 15, 2011; and

WHEREAS, the Board notes that pursuant to ZR § 72-22, it has the authority to prescribe conditions and safeguards to the grant of a variance, and the applicant's failure to comply with such conditions constitute the basis for the revocation of the grant or the denial of a future application for renewal of the grant; and

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

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

WHEREAS, the Board notes that the applicant provided an analysis of a lesser variance scenario with the Northeast Parcel occupied by conforming residential development and the remainder of the site occupied by the existing bus storage use, as well as a separate analysis for the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, the applicant provided evidence that the alternative scenarios were not feasible; and

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

WHEREAS, as to the Opposition's contention that the applicant did not satisfy the ZR § 72-21 findings related to the uniqueness of the site, the ability to realize a reasonable return, and whether the hardship was self-created, the Board notes that the applicant has submitted Sanborn maps, certificates of occupancy, geotechnical reports, foundation surveys, environmental studies, several alternative schemes of development, and numerous financial reports in support of this application, which the Board finds sufficient to satisfy these findings; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA-092K, dated March 19, 2010; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 29, 2010"- (4) sheets and "April 1, 2010"(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2013;

THAT the total number of buses on the site shall be limited to 125;

THAT the activities on the site shall be limited to the storage and dispatching of 125 buses and minor repairs;

THAT 20 parking spaces shall be provided on the site for employee parking;

THAT the existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue shall be eliminated in accordance with the BSA-approved plans;

THAT the hours of operation for bus storage and parking

shall be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; and the hours of operation for the repair shop shall be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.;

THAT the second story of the two-story accessory storage shed along Euclid Avenue shall be removed and the metal repair structures on the site shall be painted by September 15, 2010;

THAT sidewalks, tree pits, and planting strips shall be installed and maintained in accordance with the BSA-approved plans by April 15, 2011;

THAT fencing shall be installed and maintained in accordance with the BSA-approved plans, by May 15, 2011;

THAT landscaping and street trees shall be provided and maintained in accordance with the BSA-approved plans by July 15, 2011;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by January 13, 2012;

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

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

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

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

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

302-08-BZ

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

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

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

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 7, 2008, acting on Department of Buildings Application No. 200811407, reads in pertinent part:

"Proposed three family dwelling without required 8'-0" side yard is contrary to 23-462(a) ZR and ZR 23-49;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, an existing semi-detached residential building that does not provide the required side yard, contrary to ZR §§ 23-462 and 23-49; 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 March 16, 2010, April 27, 2010, and June 22, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application; and

WHEREAS, the Department of Buildings ("DOB") appeared and provided submissions in opposition to the application; and

WHEREAS, the site was the subject of an appeal concerning the interpretation of ZR § 23-49 (Special Provisions for Party or Side Lot Line Walls) related to the non-complying side yard, which the Board denied on October 16, 2007, under BSA Cal. No. 320-06-A (the "2007 Appeal"); and

WHEREAS, DOB appeared and made submissions during the course of the 2007 Appeal, in opposition to the property owner's interpretation of the side yard regulations and maintains that position in the course of the subject variance application; and

WHEREAS, the site is located on the east side of Furman Avenue, 224 feet south of Nereid Avenue, within an R5 zoning district; and

WHEREAS, the zoning lot has a width of 55'-9", a depth of 97'-6", and a total lot area of approximately 4,763 sq. ft.; and

WHEREAS, the zoning lot is divided into two tax lots, Lot 11 and Lot 12 (the subject lot), each occupied by a three-story semi-detached three-family home; and

WHEREAS, each home has a width of 19'-0", a depth of 49'-6", and a floor area of 2,935.5 sq. ft.; and

WHEREAS, the applicant represents that the home on Lot 11 complies with all relevant zoning regulations and, thus is not included in the subject variance application; DOB issued a certificate of occupancy for the home on Lot 11 on December 1, 2006; and

WHEREAS, the applicant represents that the home on Lot 12 (the "Subject Building") complies with all relevant zoning regulations, except the side yard on the northern lot line; the applicant has not provided any side yard along the northern lot line and has provided a side yard with a width of 8'-0" along the southern lot line, adjacent to Lot 11 (side yards with minimum widths of 8'-0" are required at each side lot line, pursuant to ZR § 23-462); and

WHEREAS, the applicant now seeks a variance of the side yard requirement based on the practical difficulty and unnecessary hardship, which it represents result from reliance in good faith on DOB's approval of its plans and subsequent issuance of building permits under which it completed construction of the Subject Building, absent the required side yard along the northern lot line; and

WHEREAS, the applicant claims that (1) the architect followed established procedures for the approval of building plans; (2) DOB has testified to the ambiguity of the statute; (3) completed work was based on a valid and viable interpretation of ZR § 23-49, which DOB applied; (4) a change in interpretation has created unique conditions specific to the subject site; and (5) as of right construction would require the demolition of 8'-0" of the width of the Subject Building; and

WHEREAS, the applicant sets forth the following timeline for the approval and construction process: (1) on October 24, 2003, the applicant filed an application for the construction of the Subject Building with DOB; (2) on December 12, 2003, DOB approved the plans; (3) on February 20, 2004, DOB issued permits and construction commenced thereafter; and (4) in May 2005, in response to a complaint, DOB audited the plans and issued a stop work order based on non-compliance with side yard regulations; construction of the Subject Building has been completed; and

WHEREAS, ZR § 23-462(a) provides, in pertinent part, that in R5 zoning districts, "two *side yards*, each with a minimum required width of eight feet, shall be provided"; and

WHEREAS, ZR § 23-49 provides, in pertinent part that: "a *residence* may be constructed so as to: (a) utilize a party wall or party walls, or abut an independent wall or walls along a *side lot line*, existing on December 15, 1961"; and

WHEREAS, the adjacent lot to the north is occupied by a multiple dwelling (the "Adjacent Building") with a portion of its southern wall built along a portion of the lot line it shares with the Subject Building; and

WHEREAS, the entire depth of the Subject Building's northern wall is built along the shared lot line; and

WHEREAS, as noted, the applicant appealed DOB's determination that the Subject Building does not meet the criteria of the side yard exception and, the Board denied the appeal; and

WHEREAS, the applicant maintains its position that the Subject Building was constructed so as to utilize the existing adjacent lot line wall of the Adjacent Building in a manner consistent with its interpretation of ZR § 23-49 and thus consistent with the exception to the side yard requirement of ZR § 23-462(a); and

The Interpretations of ZR § 23-49

WHEREAS, various interpretations of ZR § 23-49 and their origins were discussed in detail during the course of the 2007 Appeal, which the applicant and DOB reference during the subject variance application process; and

WHEREAS, the discussion of the various interpretations is limited in the subject variance application and is summarized below; and

WHEREAS, the applicant maintains the following interpretation: ZR § 23-49 enables the waiver of the side yard requirement when a proposed lot line wall overlaps at least 50 percent of an existing (as of December 15, 1961) lot line wall on an adjacent lot (the "Applicant's Interpretation"); and

WHEREAS, DOB maintains the following interpretation: the application of ZR § 23-49 is limited to cases where the depth of the portion of the adjacent building's lot line wall is at least 50 percent of the entire depth of the adjacent building ("DOB's Interpretation"); and

WHEREAS, the applicant asserts that DOB, in finding that the side yard exception under ZR § 23-49 did not apply to the Subject Building because the Adjacent Building's lot line wall does not have a depth that is at least 50 percent of the entire depth of the Adjacent Building, changed its interpretation of the section from the Applicant's Interpretation to DOB's Interpretation, since the time of the 2003 plan approval; and

WHEREAS, the applicant cites to a September 2, 1986 DOB memorandum (Special Provision for Party Side Lot Line Walls Section 23-49 Zoning Resolution) (the "1986 Memo") which states that "[t]he special provisions of Section 23-49(a) & (c) are applicable when the party walls are utilized or shared for 50% or more of the depth of the building"; and

WHEREAS, the applicant also relies on a letter dated July 10, 2007 and other testimony from DOB, in which DOB acknowledged that its interpretation of ZR § 23-49 may not have been consistent and/or has changed; and

WHEREAS, the applicant asserts, however, that DOB's change in interpretation did not develop until a meeting held on April 28, 2005, or later, after DOB issued permits for the Subject Building; and

WHEREAS, the applicant's architect provided an affidavit, dated July 2007, which says that the issue of the lot line wall arose during the review process and that he had argued that the side yard waiver in ZR § 23-49 applied because the proposed building (1) abutted an independent lot line wall existing on December 15, 1961 and (2) the proposed "party wall" was utilized for more than 50 percent of the depth of the portion of the building on the lot line, as required by the 1986 Memo; and

WHEREAS, the architect further stated that "depth of the building" as found in the 1986 Memo is interpreted to apply to the depth of the portion of the building along the lot line, which is the customary interpretation applied by DOB; and

WHEREAS, the architect further stated that there was never any discussion about interpreting the 1986 Memo to require that the lot line wall abut more than 50 percent of the total depth of the building on the adjacent property; and

WHEREAS, the architect finds such interpretation to be contrary to the 1986 Memo and DOB's practice; and

WHEREAS, the architect stated that the marked-up plans referred to in the initial objection sheet were discarded upon approval and that no documentation, other than the objection, exists to support the claim that DOB reviewed and approved the side yard condition and upon which interpretation it may have relied; and

WHEREAS, the applicant relies on a stamp on the DOB Plans, from a DOB plan examiner, which states "EXAMINED FOR ZONING, EGRESS AND FIRE PREVENTION" as the

basis that the side yard question was reviewed and agreed upon under its interpretation; and

WHEREAS, however, the applicant was not able to resolve the side yard objection, which led to the stop work order, subsequent to DOB's 2005 audit, and filed an appeal at the Board in December 2006 for the reinstatement of the permit; and

WHEREAS, during the 2007 Appeal, the Board determined that the subject building did not comply with DOB's Interpretation, and thus the exemption pursuant to ZR § 23-49 did not apply; and

WHEREAS, the Board also rejected the applicant's argument that the Subject Building could vest under a prior (alternate) interpretation of ZR § 23-49; and

The Relevant Building Plans

WHEREAS, during the course of the 2007 Appeal and the subject variance application, the applicant presented several sets of plans and illustrations to support its position that its plans for the Subject Building, as reviewed by DOB, comport with the Applicant's Interpretation; and

WHEREAS, the relevant plans include the following: (1) plans reviewed and approved by DOB on December 12, 2003 (the "DOB Plans") and (2) plans submitted with the subject variance application, stamped December 8, 2009 (the "BSA Plans"); and

WHEREAS, the applicant maintains its position that the DOB Plans underwent full plan review and were approved pursuant to the Applicant's Interpretation; and

WHEREAS, the Board notes that the DOB Plans and the BSA Plans are not consistent with each other; and

WHEREAS, specifically, the Board notes that the portion of the Subject Building's wall along the northern lot line is greater in the BSA Plans than in the DOB Plans; and

WHEREAS, further, the Board notes that the first floor plan in the BSA Plans provides a dimension for the portion of the Adjacent Building's wall along the shared lot line of 24'-2" and the dimension of the overlap as 13'-2", which includes the depth of a balcony and overhang (with a total depth of approximately 8'-0") – both generally understood to be permitted obstructions and not building walls; the Board notes that the required front yard is 18'-0", which, if provided, would only leave 6'-2" of overlap; and

WHEREAS, however, the Board notes that the DOB Plans do not reflect the dimension of the depth of the portion of the adjacent wall along the shared lot line, a condition that would have had to have been known in order to apply the Applicant's Interpretation; and

WHEREAS, further, on both sets of plans, the overhang and balcony conditions, which are reflected inconsistently even within each set of plans, obscure the critical dimension of the portion of the Subject Building's lot line wall that overlaps the Adjacent Building's lot line wall; and

WHEREAS, the applicant also provided an illustration into the record in an effort to demonstrate how the north wall of the subject building complies with the interpretation of ZR § 23-49 and the 1986 Memo as set forth by the architect in his 2007 affidavit; and

WHEREAS, the Board notes that the illustration is not consistent with either the DOB Plans or the BSA Plans; and

WHEREAS, specifically, the illustration shows that the portion of the Adjacent Building along the lot line has a depth of 30'-0", and the Subject Building's lot line wall overlaps the Adjacent Building's lot line wall for a distance of 15'-2" (20'-2" including balcony); the applicant's conclusion is that since the overlap on the illustration exceeds 50 percent of the Adjacent Building's depth along the lot line, it meets the Applicant's Interpretation, which it claims was understood by DOB; and

WHEREAS, because of the unexplained inconsistent measurements between the different sets of plans and illustrations, at the Board's request, the applicant provided a survey of the site conditions, which reflects that the portion of the Adjacent Building on the lot line is actually 27.4 feet (rather than 30'-0" or 24'-2") and the portion of the Subject Building that overlaps the Adjacent Building's wall has a depth of 12.4 feet, including the overhang, but not the balcony (rather than 15'-2" or 13'-2"); this overlap is 45 percent; and

WHEREAS, the Board notes that a proposed wall that overlaps 45 percent of the depth of an existing adjacent wall that is on the lot line for a depth that is less than 50 percent of the entire depth of the existing building fails to meet the Applicant's Interpretation or DOB's Interpretation; and

The Good Faith Reliance Principle

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the good faith reliance principle when they have made expenditures towards construction that was performed pursuant to a building permit, which is later revoked due to non-compliance that existed at the time of the permit issuance; the principle is raised within the variance context when applicants assert that the reliance creates a unique hardship and seek to substitute it for the customary uniqueness finding under ZR § 72-21(a); and

WHEREAS, in Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures the property owner made in reliance on the invalid permit should be considered in the variance application because: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) the municipal officials charged with carrying out the zoning resolution had granted repeated assurances to the property owner; and

WHEREAS, more recently, in Pantelidis v. Board of Standards and Appeals, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate that the state Supreme Court had conducted a good faith reliance hearing, to determine whether the property owner could claim reliance, rather than remanding the case to the Board to do so in the context of an Article 78 proceeding to overturn the Board's denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, the Board notes, however, that the body of cases, which address the good faith reliance principle and a property owner's ability to establish detrimental reliance which

can be introduced into a variance application, is limited to those where there is a unique history of approvals from high-level municipal officials (including the Village Board of Trustees in Jayne and DOB's Borough Commissioner in Pantelidis) after a series of meetings on the precise matter at issue, rather than merely a review and approval by one DOB examiner; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry are: (1) was the permit void on its face, (2) was there any way the applicant could have known about the invalidity of the permit, and (3) were there multiple municipal assurances of validity?; and

WHEREAS, the record of a good faith reliance hearing should include the applicant's explanation of: (1) whether there was any way to know that the permit was not valid because the non-compliance could not have been discovered at the time of permitting, (2) the basis for the interpretation or analysis the applicant relied on, and (3) the basis for the reliance on the approval, including all communication with DOB with specific reference to the zoning matter at issue; and

WHEREAS, the Board also acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the erroneous issuance of permits (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

The Applicant's Good Faith Reliance Claim

WHEREAS, the applicant states that it relied in good faith upon DOB's approval of the side yard condition, which was purportedly based on the Applicant's Interpretation, to substantially complete the Subject Building without knowledge of or expectation of a change in interpretation; and

WHEREAS, the applicant sets forth the following criteria in its reliance claim: (1) the project was not approved pursuant to DOB's self-certification process, but rather DOB reviewed and approved the DOB Plans; (2) the applicant and architect followed established procedures in the review and approval process; (3) the side yard issue is one that was reviewed as part of initial zoning review and not an obscure condition that might have been overlooked; (4) as discussed during the 2007 Appeal, the project architect stated that the application of ZR § 23-49 was discussed during the initial plan review and the plans were determined to be in compliance; and (5) the 1986 Memo's drafter testified that the architect and DOB's interpretation at the time of the application at DOB was consistent with his intended interpretation of the 1986 Memo and consistent with the Applicant's Interpretation; and

WHEREAS, additionally, the applicant makes the following arguments: (1) case law supports the assertion that good faith reliance on a permit can lead to practical difficulties and unnecessary hardship in complying with zoning law and regulations (see Pantelidis); and (2) DOB has established a precedent of accepting the Applicant's Interpretation; and

WHEREAS, as to case law, the applicant states that in Pantelidis, the Court of Appeals affirmed the ruling that the property owner had relied in good faith upon a permit issued by DOB and, thus, satisfied the criteria set forth in the ZR and directed the Board to grant a variance based on good faith reliance in lieu of the traditional uniqueness finding; and

WHEREAS, the applicant draws a comparison to Pantelidis by noting that, in both instances, a DOB representative was present at plan review and did not offer opposition to the plans that reflected the later-disputed condition and that the interpretation upon which the approval was based was rational, not clearly incorrect, and, thus reliance in good faith on the approval of the plans was reasonable; and

WHEREAS, the applicant also cites to Village Green Condominium Corp. v. Nardecchia, 85 A.D.2d 692, 445 N.Y.S.2d 494 (2d Dept. 1981) as an example of when a city's department of buildings changed its interpretation of a statute and later sought to revoke permits, issued under a prior interpretation, and the court held in favor of the property owner; and

WHEREAS, the applicant also cites to Kennedy v. Zoning Board of Appeals, 205 A.D.2d 629, 613 N.Y.S.2d 264 (1994) where a property owner relied upon multiple notices from the town building inspector that a certificate of occupancy was not required, a position that was later vacated, but the court determined that the original interpretation had a rational basis and the zoning board could not subsequently change its position to the property owner's detriment; and

WHEREAS, finally, the applicant cites to Friend v. Feriola, 230 N.Y.S.2d 783 (1962), *aff'd* 258 N.Y.S.2d 807 (2d Dept. 1965) in which the decision of a zoning board was annulled and the issue of a certificate of occupancy ordered where construction of a one-family home was virtually completed, the court cited to the unnecessary hardship associated with a revocation of the building permit; and

WHEREAS, the Board can distinguish all of the cited cases from the subject facts; and

WHEREAS, first, as to Pantelidis, the Board notes that the specific question of whether the disputed construction could be classified as a greenhouse was (1) established as having been specifically reviewed, pursuant to the plans before DOB, and (2) approved by a DOB Borough Commissioner, after several rounds of examination at DOB; and

WHEREAS, on the contrary, the Board notes that, in the subject case, (1) the applicant is unable to establish that the specific question about a waiver of side yard requirements was even addressed and (2) there was not a series of review, which vetted the side yard issue and confirmed that the rare exception, pursuant to ZR § 23-49 was applicable; and

WHEREAS, the Board can, similarly, distinguish the subject case from Village Green in that the court in Village Green held that the precise issue later debated was discussed at an administrative hearing and no city representative offered opposition to the property owner's associated proposal; and

WHEREAS, the Board does not find the applicant's assertion that the DOB examiner's interpretation was "a rational one and not clearly incorrect" as dispositive that the applicant should rely on it, particularly since the applicant has been unable to establish what interpretation was applied; and

WHEREAS, specifically, the applicant, nor DOB has been able to establish what interpretation was applied at the time of permit issuance so reliance on a specific, even renounced interpretation, as is the basis for the case law examples, cannot be established; and

WHEREAS, the Board can distinguish the subject case from Kennedy in that in Kennedy, as in Pantelidis and Village Green, there were multiple governmental assurances of the specific question at issue, which has not been established in the subject variance case; and

WHEREAS, as to Friend, the Board notes that, unlike in Friend, there is clear evidence that the proposal is in violation of the relevant zoning provision and DOB's Interpretation is not strained; and

WHEREAS, as to precedent, the applicant claims that DOB has routinely applied the Applicant's Interpretation; and

WHEREAS, however, the applicant has failed to produce examples of DOB approvals of building plans which follow the Applicant's Interpretation and has used the defense that it does not have the resources to find such examples; and

The Board's Determination

WHEREAS, the Board has determined that the applicant could not have relied in good faith upon an interpretation that a 50 percent overlap of the Adjacent Building on the lot line was sufficient to allow for the application of ZR § 23-49 and also built a building that only provided a 45 percent overlap; and

WHEREAS, the Board notes that although the permit may not have been void on its face, the applicant could have known about its invalidity because side yards are required as a rule and the absence of the subject side yard did not fit within any exception, as a basic survey of the property or even an accurate site plan at the time of permitting would have shown; further, the applicant has been unable to provide evidence that there were multiple DOB assurances of validity, based on communication related to the specific side yard issue; and

WHEREAS, specifically, the Board notes that contrary to the architect's affidavit, he stated at hearing that DOB had not discussed nor reviewed the side yard requirement as it related to the interpretation of the 1986 Memo; and

WHEREAS, the applicant also fails to establish its good faith reliance claim in that it has never been able to provide evidence of the basis for the interpretation or analysis relied on, or associated communication with DOB with specific reference to the side yard issue; and

WHEREAS, the applicant asserts that a stop work order was in effect before construction could be completed on an extension of the front wall of the Subject Building to increase the degree of overlap with the wall of the Adjacent Building; and

WHEREAS, the Board finds this argument to actually weaken the applicant's position since the DOB Plans do not reflect the wall extension and, thus, they could not have been the basis for the applicant's reliance, absent revised approved plans which reflect DOB's approval of such conditions; and

WHEREAS, further, the Subject Building's lot line wall has been constructed and any extension of the wall would at best be a permitted obstruction, constructed solely for the purpose of achieving an overlap, and not an actual building wall; the Board has doubts that DOB would consider such an extension to satisfy the requirement of the wall overlap if it had been presented at any point of the review process; and

WHEREAS, accordingly, the Board has determined that the applicant could not have relied in good faith on DOB's approval of the Applicant's Interpretation when the applicant has been unable to establish (1) which interpretation DOB applied that would allow for a side yard exception or (2) that it constructed the Subject Building pursuant to plans and otherwise in conformance with the Applicant's Interpretation, when the survey clearly reflects that the minimum standard of the Applicant's Interpretation – an overlap of 50 percent of the existing wall – is not met; and

WHEREAS, the Board adds that there is not any evidence that the Applicant's Interpretation or any other was applied during the approval process and that the applicant's claim that DOB concedes to multiple interpretations reinforces that there was not any good faith reliance because they had no way of knowing at the time of construction that multiple interpretations existed because DOB first admitted to that there may have been multiple interpretations approximately two years after the permit's issuance; and

WHEREAS, the project architect also made claims that the Applicant's Interpretation was within DOB's accepted practice, but failed to provide a single example where such interpretation had been accepted; the Board has distinguished the two examples provided during the 2007 Appeal from the subject case; and

WHEREAS, the Board notes that DOB maintains its position that the Applicant's Interpretation is not DOB's current accepted interpretation of ZR § 23-49, but, even if the Board defers to the applicant's assertion that DOB applied the Applicant's Interpretation in the past, namely at the time of the 2003 plan approval, the applicant's argument still fails since plans and the constructed building do not comply with the interpretation; and

WHEREAS, the Board does not find that the cited case law or any other arguments set forth by the applicant support the conclusion that good faith reliance on a DOB approval can be established in the absence of evidence that there was an approval of the side yard condition, rather than an oversight or confusion due to inconsistent site plans and architectural renderings; and

WHEREAS, the Board distinguishes the erroneous approval in the subject case, an unexplained, undocumented approval of a non-complying yard condition, which may not have ever been discussed and was certainly not clearly reflected on plans subject to DOB review, from policy change in certain of the cited case law in which a city's department of buildings or zoning board may have reconsidered an earlier position and determined it to be erroneous; and

WHEREAS, the Board is not persuaded that the Applicant's Interpretation was applied and, secondly, even if DOB formerly accepted the Applicant's Interpretation, the applicant could not have relied on it because it is inconsistent with its building plans; and

WHEREAS, accordingly, the Board rejects the applicant's claim that it relied in good faith on DOB's approval

of the DOB Plans under the Applicant's Interpretation; and

WHEREAS, because the applicant has failed to establish a good faith reliance claim, a threshold finding in the subject variance application, the Board has determined that it is not necessary to analyze the remainder of the variance findings, which are implicated by the threshold finding; and

WHEREAS, additionally, the Board denies the applicant's request to subpoena DOB records because, in light of the information on the survey, which reflects that the applicant did not comply with its own interpretation of ZR § 23-49, the question of whether DOB has accepted the Applicant's Interpretation is irrelevant; and

WHEREAS, the Applicant's Interpretation sets a higher standard, which has not been met by the Subject Building, regardless of whether DOB has ever based its approach on it; and

WHEREAS, the applicant has never argued that a 45 percent overlap, as reflected on the survey, is the basis for any interpretation or would be sufficient to meet the ZR § 23-49 standard and, thus, DOB precedent would only be relevant, if at all, if the applicant actually complied with the Applicant's Interpretation; and

WHEREAS, the applicant does not assert that DOB has accepted or would accept a waiver of the side yard requirement for an even lower standard than that set forth in the Applicant's Interpretation, therefore, evidence that DOB has accepted the Applicant's Interpretation does not support its case; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) its variance request must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a), as modified by the good faith reliance doctrine, which is a threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Bronx Borough Commissioner, dated November 7, 2008, acting on Department of Buildings Application No. 200811407, is sustained and the subject application is hereby denied.

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

29-09-BZ
CEQR #09-BSA-076R
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 J. Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 29, 2010, acting on Department of Buildings Application No. 520038673, reads in pertinent part:

"ZR 24-34. Front yards should be 15 feet min. Front yard measured from street widening line to the front building wall.

ZR 24-35. If building is used for community facility use has an aggregate width of street walls equal to 80 feet or less, two side yards shall be provided, each with a minimum required width of eight feet;" and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3X zoning district, the conversion of the existing two-story home to a community facility building occupied by a synagogue (Use Group 4) and accessory rabbi's residence, and the enlargement of the existing detached garage for use as an accessory mikvah, which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35 and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in *The City Record*, with continued hearings on January 12, 2010 and February 23, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 2, Staten Island, recommends approval of the application; and

WHEREAS, an adjacent property owner provided testimony in opposition to the proposal, raising concerns about the condition of the site and the noise generated by the synagogue use; and

WHEREAS, this application is brought on behalf of the Chabad Israeli Center, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject site is located on the northwest corner of Brunswick Street and Richmond Hill Road, within an R3X zoning district; and

WHEREAS, the site has approximately 54 feet of frontage on Brunswick Street, 100 feet of frontage on Richmond Hill Road, and a lot area of 5,603.5 sq. ft.; and

WHEREAS, the subject site consists of a two-story home with a detached garage, which is currently occupied by the Synagogue and accessory Rabbi's residence; and

WHEREAS, the applicant now seeks to legalize the conversion of the two-story home into a synagogue and

accessory Rabbi's residence, and to enlarge the existing detached garage and permit its conversion to a mikvah; and

WHEREAS, the proposal provides for a building occupied by a synagogue and accessory Rabbi's residence, and a detached building to be occupied by a mikvah, with the following parameters: 3,376 sq. ft. of floor area (.60 FAR); a front yard with a depth of 3'-11" along the southern lot line and a front yard with a depth of 14'-9" along the eastern lot line (two front yards with a minimum depth of 15'-0" each are required); a side yard of 5'-4" along the northern lot line and no side yard along the western lot line (two side yards with a minimum width of 8'-0" each are required); and

WHEREAS, the proposal provides for the following uses: (1) a synagogue, Rabbi's office, multi-function room, and kitchenette on the first floor; (2) an accessory Rabbi's residence on the second floor; and (3) a mikvah in the detached garage; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested waivers: (1) to accommodate the current congregation of approximately 20 families; (2) to provide separate space for the women's mikvah; and (3) to provide a residence for the Synagogue's Rabbi; and

WHEREAS, the applicant represents that the proposed amount of space would accommodate the congregation of approximately 20 families, which previously worshipped in a nearby rented space but was unable to remain at that location and moved to the subject site in order to continue to worship; and

WHEREAS, the applicant further represents that the location of the subject site is essential to the operation of the Synagogue within the community, as the proximity of the site enables the members of the congregation to walk to the Synagogue, which is a requirement for attendance on the Sabbath and holidays when travel by vehicle is otherwise prohibited; and

WHEREAS, the applicant states that conversion of the existing detached garage into a mikvah is necessary in order to provide this essential service for the women of the congregation; and

WHEREAS, the applicant notes that the existing garage is a permitted obstruction in a side yard for a residential use, but that the proposed conversion to a mikvah creates a side yard non-compliance because it is not a permitted obstruction for a community facility use; and

WHEREAS, the applicant represents that the subject building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that that the uses and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the subject building are consistent with the bulk and height of the homes in the surrounding neighborhood, which are predominantly two stories; and

WHEREAS, the applicant notes that Richmond Hill Road is sloped alongside the site, such that the garage/mikvah is located above grade but at the equivalent of the cellar level of the synagogue, therefore while it is not a permitted obstruction under the Zoning Resolution, its bulk is not visible from the remainder of the site, and it would be permitted as-of-right if it remained a residential garage; and

WHEREAS, the applicant further notes that the Synagogue is located in an R3X zoning district, and a waiver pursuant to ZR § 25-33 is permitted if fewer than ten parking spaces are required; and

WHEREAS, the applicant represents, and the Board agrees, that based on the applicable formula and the rated capacity of the largest room of assembly, four parking spaces would be required, thereby qualifying the Synagogue for a waiver under ZR § 25-33; thus, the Synagogue is not required to provide any off-street parking; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet

the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant front yards and side yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (aj) and 617.5; 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.09BSA076R, dated February 20, 2009; 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, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R3X zoning district, the conversion of the existing two-story home to a community facility building occupied by a synagogue (Use Group 4) and accessory Rabbi's residence, and the enlargement of the existing detached garage for use as an accessory mikvah, which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2010"– (8) sheets; and *on further condition*:

THAT the parameters of the site shall be: a floor area of 3,376 sq. ft.; an FAR of 0.60; a front yard with a minimum depth of 3'-11" along the southern lot line; a front yard with a minimum depth of 14'-9" along the eastern lot line; a side yard with a minimum width of 5'-4" along the northern lot line; no side yard along the western lot line; a lot coverage of 34 percent; a wall height of 17'-8"; and a total height of 24'-4"; as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship, an accessory Rabbi's residence, and an accessory mikvah (Use Group 4);

THAT no commercial catering shall take place onsite;

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

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

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

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

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, July 13, 2010.

270-09-BZ

APPLICANT – Richard Lobel, for Jack Kameo, owner.

SUBJECT – Application September 21, 2009 – Variance (§72-21) for the construction of a single family home on a vacant corner lot, contrary to floor area (§23-141), side yards (§23-461) and front yard (§23-47). R4-1 zoning district.

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 2, 2009, acting on Department of Buildings Application No. 320050500, reads in pertinent part:

"Proposed one-family home within an R4-1 zoning

district:

1. Exceeds the maximum permitted floor area and floor area ratio as set forth in ZR Section 23-141;
2. Provides less than minimum required front yards as set forth in ZR Section 23-45; and
3. Provides less than the minimum required side yards as set forth in ZR Section 23-461;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4-1 zoning district, the proposed construction of a two-story single-family home that does not provide the required floor area, floor area ratio ("FAR"), front yard, and side yards, contrary to ZR §§ 23-141, 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, April 27, 2010, May 11, 2010, June 8, 2010 and June 22, 2010, and then to decision on July 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 15, Brooklyn, recommends approval of the application; and

WHEREAS, the site is located on a corner through lot bounded by Homecrest Avenue to the east, Avenue S to the north, and East 12th Street to the west, within an R4-1 zoning district; and

WHEREAS, the site has a width of approximately 28 feet, a depth of approximately 80 feet, and a total lot area of 2,264.5 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the site; and

WHEREAS, the applicant proposes a floor area of 2,567 sq. ft. (the maximum permitted floor area is 1,698 sq. ft.); an FAR of 1.13 (0.75 FAR is the maximum permitted); a front yard with a depth of 3'-8" along the northern lot line (a front yard with a minimum depth of 10'-0" is required); and no side yard along the southern lot line (a side yard with a minimum width of 8'-0" is required); and

WHEREAS, the applicant originally proposed to construct a single-family home with a floor area of 3,066 sq. ft. (1.35 FAR) and a front yard with a depth of 2'-8" along the northern lot line; and

WHEREAS, the Board directed the applicant to reduce the FAR and to increase the depth of the front yard along the northern lot line; and

WHEREAS, accordingly, the applicant revised its application to reflect the current proposal, thereby reducing the floor area and front yard waivers; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a single-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the adjoining lot; and

WHEREAS, the applicant represents that the requested relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's shallow depth; and

WHEREAS, the applicant represents that the site's pre-existing depth of approximately 80'-0", combined with a lot width of 28'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the site is a vacant lot and is the only site in the surrounding area with frontages on three streets, and that the requested waivers are necessary to develop the site with a viable home; and

WHEREAS, specifically, the applicant states that the subject site is a corner lot bounded by three streets, and therefore has three front yards and only one side yard; and

WHEREAS, the applicant notes that in the subject R4-1 zoning district, a zero lot line building is permitted along one side yard provided that the second side yard has a width of at least 8'-0"; and

WHEREAS, the applicant states that if the subject site were a regular corner lot with only two frontages, it could maintain the zero lot line building along the southern lot line because the proposed yards along the eastern lot line and western lot line have widths of 10'-0" and 17'-0", respectively; and

WHEREAS, however, the applicant states that because the subject site has three front yards and only one side yard, the side yard along the southern lot line must have a width of at least 8'-0" in order to comply with the underlying district regulations; and

WHEREAS, therefore, the applicant represents that compliance with the applicable bulk regulations would result in an undersized home with a width of ten feet and a depth of 47 feet; and

WHEREAS, the applicant asserts that a complying home would therefore result in constrained floor plates with small and narrow rooms; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram reflecting that there are only two other lots in the surrounding neighborhood with a depth as shallow as the subject site; and

WHEREAS, the applicant also submitted a floor area analysis for all single- and two-family homes on corner lots within a 400-ft. radius of the subject site, which reflected a median floor area of 2,520 sq. ft. (1.08 FAR) on corner lots in the surrounding neighborhood; and

WHEREAS, the applicant represents that the proposed floor area of 2,567 sq. ft. (1.13 FAR) is comparable to the median floor area of corner lots in the surrounding area; and

WHEREAS, the applicant states that the site was formerly developed with a single-family home, but that it had to be demolished due to fire damage; and

WHEREAS, the applicant notes that the subject site is located in Community Board 15, one of the community districts eligible for a special permit to enlarge an existing single-family home pursuant to ZR § 73-622; and

WHEREAS, the applicant represents that the proposed home is similar in context to other homes in the area that have been enlarged pursuant to ZR § 73-622; and

WHEREAS, however, the subject site is vacant because the former home was destroyed by fire, therefore the proposed home must be built anew and the applicant is unable to utilize the special permit pursuant to ZR § 73-622; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development; and

WHEREAS, specifically, as noted above, the applicant submitted a floor area survey for corner lots within a 400-ft. radius of the subject site, reflecting that four of the seven corner lots surveyed have a larger floor area than the subject site, and three of the seven homes have a higher FAR than the subject site; and

WHEREAS, the applicant states that the site has a side yard with a width of 10'-0" along Homecrest Avenue and a front yard with a depth of 17'-0" along the East 12th Street frontage, both of which comply with the underlying zoning regulations; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story single-family home with a floor area of 3,066 sq. ft. (1.35 FAR) and a front yard with a depth of 2'-8" at the northern lot line; and

WHEREAS, at the Board's direction, the applicant revised the proposal to reflect a single-family home with a floor area of 2,567 sq. ft. (1.13 FAR) and a front yard with a depth of 3'-8", thereby reducing the requested floor area and front yard waivers; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21, to permit, in an R4-1 zoning district, the proposed construction of a two-story single-family home that does not provide the required floor area, FAR, front yard and side yards, contrary to ZR §§ 23-141, 23-45 and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 1, 2010"– (16) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: approximately 2,567 sq. ft. of floor area (1.13 FAR); lot coverage of approximately 54 percent; a perimeter wall height of 25'-0"; a total height of 34'-6"; a front yard with a depth of 3'-8" along the northern lot line; a front yard with a depth of 17'-0" along the western lot line; a front yard with a depth of 10'-0" along the eastern lot line; no side yard along the southern lot line; and one parking space, as per the BSA-approved plans;

THAT the floor area in the attic shall be limited to 95 sq. ft., as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

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

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

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

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

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

271-09-BZ
CEQR #10-BSA-003Q

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

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

PREMISES AFFECTED – 132-40 Metropolitan Avenue,

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

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated August 20, 2009, acting on Department of Buildings Application No. 410123441, reads in pertinent part:

> "[R]equest to change "use" at first, second and third floors to a physical culture establishment, contrary to ZR 32-10 and referral to the Board of Standards and Appeals pursuant to 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 zoning district, the legalization of a physical culture establishment ("PCE") on the first, second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 12, 2010 after due notice by publication in *The City Record*, with continued hearings on March 16, 2010, April 20, 2010 and May 25, 2010, and then to decision on July 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 9, Queens, recommends disapproval of this application, citing concerns with the lack of parking at the site; and

WHEREAS, the subject site is located on a triangular-shaped through lot bounded by Metropolitan Avenue to the north and Jamaica Avenue to the south, within a C2-3zoning district; and

WHEREAS, the site is occupied by a three-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 16,980 sq. ft. on a portion of the first and second floors and the entire third floor; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 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, in response to the Community Board's concerns, the Board inquired about the parking at the site; and

WHEREAS, in response, the applicant states that pursuant to ZR § 36-21, the site is exempt from the parking requirement because the subject building was constructed and a certificate of occupancy was issued prior to December 15, 1961, nevertheless, the applicant submitted a revised site plan reflecting that 27 parking spaces will be provided at the site, which will be available for patron parking, and provided information regarding a public parking garage located at Jamaica Hospital Medical Center within one block from the site; and

WHEREAS, further, the applicant provided a traffic and parking analysis which indicates that only 32 percent of patrons drive to the PCE, and that there is frequent turnover and availability of street spaces, as well as additional off-street parking located at the Jamaica Hospital Medical Center parking garage; 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 January 17, 2009, 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 January 17, 2009 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.10BSA003Q, dated September 18, 2009; and

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

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 zoning district, the legalization of a physical culture establishment on the first, second and third floors of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 30, 2009"- Four (4) sheets, and "Received March 11, 2010"- One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on January 17, 2019;

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 signage shall comply with C2 district regulations;

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, July 13, 2010.

333-09-BZ
CEQR #10-BSA-037K
APPLICANT – Moshe M. Friedman, for Cong Yeshiva Beis Chaya Mushka, Inc., owner.
SUBJECT – Application December 23, 2009 – Variance (§72-21) to permit the vertical extension of an existing religious school (*Congregation Yeshiva Beis Chaya Mushika*), contrary to floor area, lot coverage, height, sky exposure plane, front yard, and side yard regulations (§§24-11, 24-521, 24-34, and 24-35). R4 zoning district.
PREMISES AFFECTED –360 Troy Avenue aka 348-350 Troy Avenue aka 1505-1513 Carroll Street, northwest corner of Troy Avenue and Carroll Street, Block 1406, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD # 9BK
APPEARANCES –
For Applicant: Yosef S. Gottdiener.
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 15, 2009, acting on Department of Buildings Application No. 320065503, reads, in pertinent part:

"Proposed extension to an existing school (UG 3) in an R4 district is contrary to:
ZR 24-11 Floor area & lot coverage
ZR 24-521 Height
ZR 24-34 Front yard
ZR 24-35 Side yard
ZR 24-521 Sky exposure plane;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing one- and two-story educational facility (Use Group 3), which does not comply with zoning regulations for floor area, lot coverage, height, front yards, side yards, and sky exposure plane, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-521; and

WHEREAS, the applicant proposes to enlarge and maintain the use of an existing school; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in the *City Record*, and then to decision on July 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 9, Brooklyn, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Congregation Yeshiva Beis Chaya Mushka Inc. (the "School"), a nonprofit religious school; and

WHEREAS, the site is located on the northwest corner of Troy Avenue and Carroll Street, within an R4 zoning district; and

WHEREAS, the site has 100 feet of frontage on Carroll Street, 100 feet of frontage on Troy Avenue, and a lot area of 10,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a one- and two-story school building with a floor area of

approximately 12,333 sq. ft. (1.23 FAR); and

WHEREAS, the footprint of the existing building occupies the entire zoning lot; and

WHEREAS, the School now proposes to expand the second floor of the building to match the first floor footprint and to add a one-story enlargement to create a three-story building with uniform floor plates; and

WHEREAS, the proposed enlargement will result in the following non-compliances: a floor area of 30,000 sq. ft. (3.0 FAR) (the maximum floor area permitted is 20,000 sq. ft. (2.0 FAR)); lot coverage of 100 percent (60 percent is the maximum permitted); a front wall height of 38'-10" (35'-0" is the maximum permitted); no front yards (two front yards with minimum depths of 15'-0" each are required); no side yards (two side yards with minimum widths of 10'-0" each are required); and encroachment into the sky exposure plane; and

WHEREAS, the enlargement will be occupied by (1) a multi-purpose room, computer room, dance room, lounge, offices, and seven additional classrooms on the second floor; and (2) a multi-purpose room, computer room, science lab, lounge, offices, and 11 classrooms on the third floor; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) relieving overcrowded classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) expanding the available extracurricular activities; and (4) maintaining the pre-school, elementary school, and high school divisions in one location; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the requested waivers are necessary to provide the program space necessary to adequately serve its growing student body; and

WHEREAS, the applicant states that there are currently 230 students enrolled at the School, they have outgrown their current facilities as they are forced to turn away new applicants due to lack of space, and there is currently a waiting list; and

WHEREAS, the applicant represents that the proposed waivers will allow the School to accommodate its anticipated total enrollment of 480 students ranging from pre-school through high-school; and

WHEREAS, the applicant represents that the proposed waivers will also enable the school to provide a science lab, computer rooms, art and dance space, as well as other auxiliary spaces that will accommodate much needed extracurricular programs related to music, dance, art and other cultural activities; and

WHEREAS, the applicant further represents that the proposed enlargement will allow the School to remain in its existing location to serve the local Crown Heights Jewish community, and to maintain the pre-school, elementary school and high school divisions in one location, so as to provide proper supervision of the students as well as to engender moral and religious support; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, however, the applicant represents that the configuration of the existing site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the existing building cannot accommodate the existing or anticipated school enrollment, which has led to over-crowding and an inability to accept new students; and

WHEREAS, the applicant states that the existing building occupies the entire lot, and the need to enlarge the School requires a vertical enlargement that follows the floor plates of the existing building; and

WHEREAS, as to the configuration of the existing site, the applicant states that the existing school is currently non-compliant with respect to lot coverage, front yards, and side yards; and

WHEREAS, the applicant states that the lot coverage, front yard and side yard waivers are necessary because the enlargement is being constructed to match the existing lot coverage, front yard, and side yard non-compliances, thereby squaring off the floor plates, which will allow the most efficient and beneficial interior configuration for classroom space; and

WHEREAS, the applicant states that the requested waivers are necessary to accommodate a building large enough for an efficient interior layout, suitable to address the above-mentioned programmatic needs; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the surrounding area is characterized predominately by residential uses; and

WHEREAS, the applicant states that the proposed enlargement has been designed to maintain a height that is

consistent with that found within the surrounding neighborhood; and

WHEREAS, in support of this statement, the applicant submitted a 400-ft. radius diagram reflecting that there are 12 buildings in the surrounding area with a height between four and six stories; therefore, the applicant represents that the height of the proposed three-story school building is consistent with the surrounding neighborhood; and

WHEREAS, specifically, the applicant states that the adjacent building to the west is a six-story multiple dwelling and the adjacent building to the north is a four-story multiple dwelling; thus, the proposed building will be lower in height than the adjacent buildings; and

WHEREAS, the applicant further states that the adjacent building to the west has no lot line windows facing the subject building, and there is a large alley separating the subject building from the adjacent building to the north; therefore the proposed side yard waiver will not have a negative impact on the adjacent buildings; and

WHEREAS, the Board notes that there is a vacant lot immediately to the north of the subject site, and that it received a letter of consent for the proposal from the owner of the vacant lot; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated March 17, 2010, DOT states that it has no objection to the proposed enlargement, and states that it will prepare a school safety map with signs and markings upon the approval and completion of the enlargement; and

WHEREAS, the Board inquired about the hours and use of the rooftop play area; and

WHEREAS, in response, the applicant states that the rooftop will only be used for School purposes, and that the hours of operation of the rooftop are limited to: Sunday, from 9:00 a.m. to 12:00 p.m.; Monday through Thursday, from 9:00 a.m. to 5:00 p.m.; Friday, from 9:00 a.m. to 1:00 p.m.; and closed on Saturday; and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant provided a lesser variance scenario with a compliant 2.0 FAR which was found to be unable to accommodate the School's programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 ak); 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. 10BSA037K, dated September 30, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the enlargement of an existing two-story educational facility (Use Group 3) which does not comply with zoning regulations for floor area, lot coverage, height, front yards, side yards, and sky exposure plane, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-521, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 20, 2010," – (10) sheets and "June 8, 2010"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories, a maximum floor area of 30,000 sq. ft. (3.0 FAR); and a height of 38'-10", as shown on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

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

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

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, July 13, 2010.

33-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Vornado Realty Trust, owner; 692 Broadway Fitness Club, Inc., lessee.

SUBJECT – Application March 18, 2010 – Special Permit (§73-36) to allow the operation of a physical culture establishment. M1-5B zoning district.

PREMISES AFFECTED – 692 Broadway (aka 384/8 Lafayette Street, 2/20 East 4th Street) southeast corner of intersection of Broadway and East 4th Street, Block 531, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 16, 2010, acting on Department of Buildings Application No. 120262651, reads in pertinent part:

> "Proposed physical cultural establishment at the 1st and 2nd floors is not permitted as-of-right in M1-5B zoning district and it is contrary to ZR 42-10; BSA special permit is required for approval pursuant to ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, a physical culture establishment (PCE) on portions of the first and second floors of a 12-story mixed-use commercial/residential/ manufacturing building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 18, 2010 after due notice by publication in *The City Record*, with a continued hearing on June 22, 2010, and then to decision on July 13, 2010; and

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

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

WHEREAS, the subject site is a through lot bounded by Broadway to the west, East 4th Street to the north, and Lafayette Street to the east, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the site is occupied by a 12-story mixed-use commercial/residential/ manufacturing building; and

WHEREAS, the PCE will occupy a total floor area of 16,773 sq. ft., with 1,508 sq. ft. of floor area located on the first floor and 15,265 sq. ft. of floor area located on the second floor; and

WHEREAS, the PCE will be operated as Broadway Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 5:30 a.m. to 11:00 p.m.; and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving the proposed alterations to the subject building, dated June 4, 2010; 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA052M, dated May 4, 2010; and

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

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, a physical culture establishment on portions of the first and second floors of a 12-story mixed-use commercial/residential/manufacturing building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 8, 2010"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 13, 2020;

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

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

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

THAT 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, July 13, 2010.

34-10-BZ
CEQR #10-BSA-053M
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
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 Manhattan Borough Superintendent, dated March 15, 2010, acting on Department of Buildings Application No. 120220992, reads in pertinent part:

> "Proposed physical cultural or health establishment at cellar and 1st floors is not permitted as-of-right in M1-5B zoning district and it is contrary to ZR 42-10. BSA special permit is required as per ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, a physical culture establishment (PCE) at the cellar and first floor of a five-story mixed-use building with Joint Living Work Quarters for Artists ("JLWQA") on the upper floors, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in *The City Record*, with a continued hearing on June 8, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application with the condition that the term of the grant be limited to ten years; and

WHEREAS, an adjacent building owner, represented by counsel, provided written and oral testimony in opposition to this application (the "Opposition"), citing the following primary concerns: (1) the proposed facility is a Use Group 6 nail salon, which would not be permitted in the subject zoning district, rather than a PCE; (2) the applicant has not provided evidence of a massage therapist's license; and (3) the proposed facility will impair the essential character and future use and development of the surrounding area; and

WHEREAS, the Opposition ultimately did not pursue its objections to the proposal; and

WHEREAS, the subject site is located on the northeast corner of Broome Street and Crosby Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a five-story mixed-use building with JLWQA on the upper floors; and

WHEREAS, the PCE will occupy 2,608 sq. ft. of floor area located on the first floor, with an additional 2,608 sq. ft. of

floor space located in the cellar; and

WHEREAS, the PCE will be operated as York Spa Beauty Care, Inc.; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 8:00 a.m. to 12:00 a.m.; and Sunday, from 9:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed massage therapists; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed alterations to the subject building, dated June 24, 2010; and

WHEREAS, although the Opposition did not pursue its objections, the applicant provided the following responses: (1) massage is not merely an accessory use at the proposed PCE, as the vast majority of the floor space is designated to massage rooms, with only 380 sq. ft. dedicated to the practice of manicures and pedicures; (2) the proposed PCE is not yet in operation, and licensed massage therapists will be hired before the PCE opens for business; and (3) the proposed PCE is a full service spa, which fits within the character of the surrounding neighborhood, as evidenced by the existence of similar facilities in the surrounding area; and

WHEREAS, in response to concerns about the length of the term, the Board notes that ZR § 73-36 limits the term of the subject special permit to a maximum of ten years; 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA053M, dated April 18, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, a physical culture establishment at the cellar and first floor of a five-story mixed-use building with JLWQA on the upper floors, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 19, 2010"- (7) sheets ; and *on further condition*:

THAT the term of this grant shall expire on July 13, 2020;

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

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

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

THAT 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, July 13, 2010.

41-10-BZ
CEQR #10-BSA-055M
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for NYU Hospital Center, owner; New York University, lessee.
SUBJECT – Application March 24, 2010 – Variance pursuant (§72-21) to allow for the enlargement of a community facility (*NYU Langone Medical Center*) contrary to rear yard (§24-36) and signage regulations (§§22-321, 22-331, 22-342). R8 zoning district.
PREMISES AFFECTED – 522-566/596-600 First Avenue aka 400-424 East 34th Street and 423-437 East 30th Street, East 34th Street; Franklin D. Roosevelt; East 30th Street and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.
COMMUNITY BOARD #6M
APPEARANCES –
For Applicant: Elise Wagner.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 22, 2010, acting on Department of Buildings Application No. 120229519, reads in pertinent part:

> "ZR 24-36. Proposed enlargement does not comply with the minimum rear yard requirements of the Zoning Resolution.
> ZR 22-331 Proposed signage does not comply with regulations for permitted
> ZR 22-342 illuminated accessory signs for hospitals or the height of signs;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the enlargement of an existing community facility (New York University Langone Medical Center) that does not comply with zoning regulations for rear yard or signage, contrary to ZR §§ 24-36, 22-331 and 22-342; and

WHEREAS, a public hearing was held on this application on May 25, 2010, after due notice by publication in the *City Record*, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, subject to the condition that certain signs (noted as Signs 4, 6, and 13 on the plans) be eliminated, and another sign (Sign 7) be reduced in size; and

WHEREAS, the application is brought on behalf of the New York University Langone Medical Center (the "Medical Center"), a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34th Street to the north, the Franklin D. Roosevelt Drive (the "FDR Drive") to the east, East 30th Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, the proposed enlargement will be located on an approximately 11,400 sq. ft. vacant parcel on the northwest portion of the zoning lot, bounded by First Avenue to the west, the Medical Center's Perelman Building to the north, an Amtrak ventilation tower to the east (the "Amtrak Site") and the Medical Center's Tisch Hospital to the south (the "Development Site"); and

WHEREAS, the Development Site is an irregular "L"-shaped parcel with approximately 138'-0" of frontage on First Avenue and a depth that varies from 50'-0" to 125'-6"; and

WHEREAS, the Amtrak Site which adjoins the rear lot line of the Development Site is located on a separate zoning lot within the subject superblock, with access to First Avenue by means of an access easement over the northern portion of the Development Site; and

WHEREAS, the applicant states that the Amtrak Site's building is occupied by a ventilation shaft for, and emergency exit stair from, the LIRR train tunnels which are owned by Amtrak; and

WHEREAS, the Development Site is currently occupied by the existing Emergency Department, a portion of the Tisch Hospital building, an air intake shaft serving the mechanical equipment in the cellar of Tisch Hospital, a paved area for ambulance unloading and pedestrian access, and a portion of the bed of former East 33rd Street (subject to an access easement for Amtrak); and

WHEREAS, the applicant proposes to reconfigure and renovate the existing Emergency Department space, expand it within a portion of the Tisch Hospital building, and construct a 3,780 sq. ft. (12,380 gross sq. ft.) enlargement at the first floor and cellar (the "Proposed Enlargement") to increase the total floor area on the zoning lot to 2,064,562 sq. ft. (5.1 FAR); and

WHEREAS, the maximum permitted FAR for a community facility in the subject zoning district is 6.5; and

WHEREAS, a portion of the Proposed Enlargement would be located within the required 30'-0" rear yard; and

WHEREAS, the applicant notes that ZR § 24-33 provides a rear yard exemption for a community facility building located within a residence district, allowing the first floor, or up to a height of 23'-0" of the building, to encroach into the rear yard as a permitted obstruction; and

WHEREAS, the applicant states that although the portion of the Proposed Enlargement located in the required rear yard is only one story, the rear yard exemption does not apply because the height of the rooftop mechanicals and parapet wall located within the required rear yard exceed 23 feet in height; and

WHEREAS, the applicant also proposes to provide 354 sq. ft. of signage at the entrances and on the façade of the Proposed Enlargement (25 sq. ft. is the maximum signage permitted), with a vertical panel sign integrated into the south façade of the Proposed Enlargement extending above the height of the ground floor ceiling (signs are not permitted to

extend above the ground floor ceiling); and

WHEREAS, the applicant represents that the proposed building will not create any new non-compliances or increase any existing non-compliances except for the rear yard and signage requirements; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing site, including the irregular, shallow configuration of the Development Site, and the existing improvements on and surrounding conditions of the zoning lot; and (2) the programmatic needs of the Medical Center; and

WHEREAS, as to the configuration of the Development Site, the applicant states that it is an irregular "L"-shaped site with approximately 138'-0" of frontage on First Avenue and a depth that varies from approximately 50'-0" to 125'-6"; and

WHEREAS, the applicant further states that the northernmost portion of the Development Site on which construction is permitted is made even shallower by an existing air intake shaft located on the eastern portion of the site; and

WHEREAS, the applicant notes that the northern portion of the Development Site, from First Avenue to the Amtrak Site, is subject to an access easement in favor of Amtrak, and permanent obstructions are not permitted within the easement area, thereby preventing the expansion of the Emergency Department into that portion of the Development Site; and

WHEREAS, the applicant states that the Development Site is bounded by the Medical Center's Perelman Building to the north, the Amtrak ventilation tower to the east, and the Tisch Hospital building to the south, and the inability to demolish these existing buildings, which are either necessary to meet the programmatic needs of the Medical Center, or are owned by Amtrak, further constrain the Development Site; and

WHEREAS, the applicant represents that, given the irregular shape of the Development Site and the surrounding conditions on the zoning lot, the Proposed Enlargement is necessary in order to meet the programmatic needs of the Medical Center, which include: (1) providing a sufficient number of exam/treatment rooms, triage/treatment rooms, and disposition seats to handle current and projected patient volumes; (2) improving patient flow and enhancing visual and acoustic privacy; (3) separating pediatric patients from adult patients, and walk-in patients from ambulance patients; (4) improving staff travel distances and patient waiting times; and (5) providing adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the applicant represents that the Emergency Department is experiencing increased patient loads, with approximately 39,000 visitors per year; and

WHEREAS, the applicant states that visits to the Emergency Department have increased in recent years by between three and five percent per year, and are projected to continue to increase at such a rate; and

WHEREAS, the applicant further states that patient loads are especially high at the Emergency Department due to the closing of Cabrini Hospital; and

WHEREAS, the applicant represents that the existing Emergency Department is undersized and inefficiently organized, as it contains only approximately 9,250 gross sq. ft., with 18 exam/treatment rooms, one triage/treatment room, and no disposition seats; and

WHEREAS, the applicant states that currently, all patients for the Emergency Department enter at the same location off First Avenue, resulting in an undesirable mixing of walk-in patients with patients arriving by ambulance, as well as pediatric patients with adult patients; and

WHEREAS, the applicant further states that space constraints result in poor patient flow and minimal acoustic and visual privacy; and

WHEREAS, the applicant represents that the existing mechanical and electrical systems serving the Emergency Department are also inadequate; and

WHEREAS, the applicant states that the Proposed Enlargement would provide an Emergency Department with 33,290 gross sq. ft., 29 exam/treatment rooms, three triage/treatment rooms, and an eight-seat disposition lounge; and

WHEREAS, the applicant represents that the increased size and number of rooms, as well as the improved layout of the Proposed Enlargement will improve patient flow, enhance visual and acoustic privacy, and decrease staff travel distances and patient waiting times; and

WHEREAS, the applicant states that the Proposed Enlargement would provide separation of walk-in patients from ambulance patients by creating a visually distinguishable access point for walk-in patients and a separate entrance corridor for ambulance patients, and would provide separation of pediatrics patients from adult patients by creating a dedicated space for pediatrics; and

WHEREAS, the applicant notes that existing mechanical equipment in the Tisch Hospital building distributes air throughout the west portion of Tisch Hospital through a vertical shaft on that end of the building, which leads to an air handling unit located within the cellar of Tisch Hospital and to the existing air shaft on the Development Site; and

WHEREAS, the applicant states that the programmatic needs of the Medical Center require the elimination of the air intake shaft located on the eastern portion of the Development Site and the air handling unit located in the cellar of the Tisch Hospital building, in order to allow more appropriate dimensions and an improved layout of the proposed Emergency Department; and

WHEREAS, specifically, the applicant states that the removal of the on-site air intake shaft allows for significant increases in plan efficiency by providing a larger floor plate and entrance area; and

WHEREAS, the applicant states that following the removal of the air intake shaft and air handling unit, air handling would be accomplished by two HVAC units located on the roof of the portion of the Proposed

Enlargement located within the required rear yard, which would extend above the allowable height of 23 feet; and

WHEREAS, the applicant represents that the new equipment replacing the air handling unit and air shaft must be located as close as possible to the existing vertical shaft within the Tisch Hospital building so that it can continue to serve Tisch Hospital efficiently; and

WHEREAS, the applicant further represents that the roof of the Proposed Enlargement is the only feasible location for the mechanical equipment that is within a reasonable distance of the existing ventilation shaft; and

WHEREAS, the applicant states that the rooftop mechanical equipment, including the equipment encroaching within the required rear yard, would be surrounded by a parapet wall reaching a height of 40'-2" above mean curb level, which serves to screen the mechanical equipment when the building is viewed at street level; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary in order to provide the necessary floor plates and building layout to satisfy the programmatic needs of the Medical Center, by locating the proposed mechanical equipment and accompanying parapet wall on the roof of the Proposed Enlargement; and

WHEREAS, as to the requested signage, the applicant states that it is necessary in order to provide adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the applicant submitted a signage analysis stating that the signage must be visible to northbound traffic on First Avenue, since all vehicles ultimately approach the Emergency Department from this direction; and

WHEREAS, the applicant notes that First Avenue is a five-lane, heavily traveled roadway, and that traffic often backs up at the traffic signal at East 33rd Street, restricting visibility of the Emergency Department; and

WHEREAS, the applicant states that the Emergency Department is one of three emergency departments located along the First Avenue medical corridor, and the close proximity of both the Bellevue Hospital and the Veterans Affairs Hospital emergency departments, and the lack of signage identifying each facility results in confusion for visitors; and

WHEREAS, the applicant further states that there are multiple entrances to the Medical Center campus along First Avenue, and most of them are seen by approaching First Avenue traffic before the Emergency Department; as a result, visitors to the Emergency Department are often drawn instead into the Medical Center's main entrance, which is more visually significant than the other entrances, thereby losing critical time in urgent situations; and

WHEREAS, the applicant represents that the Emergency Department entrances must therefore be clearly identified as part of the Medical Center, rather than other hospitals along First Avenue, and must be clearly distinguished from other Medical Center entrances; and

WHEREAS, the applicant states that the Medical Center has established an emergency drop-off lane separated from First Avenue traffic flow by a temporary curb to allow patients to be safely dropped off at the Emergency Department's walk-in entrance, but notes that traffic congestion often blocks the view of the lane divider for vehicles that are not in the far right lanes; and

WHEREAS, the applicant further states that if vehicles miss the drop-off lane, they must take a long route to loop back around to First Avenue via FDR Drive and East 25th Street; therefore, the Emergency Department signage must be visible and legible to vehicles well before they encounter the emergency drop-off lane; and

WHEREAS, the applicant represents that facilities within the Medical Center campus have historically been referenced and known by the building name, therefore the building name for the Emergency Department must be located on the exterior façade; and

WHEREAS, the applicant further represents that the confusion caused by the close proximity of the other hospitals and lack of clear signage for the subject Emergency Department is increased in the nighttime hours; therefore, the Emergency Department signage must be sufficiently illuminated in order to ensure legibility after dark; and

WHEREAS, the applicant notes, however, that only one sign (Sign 7 on the plan sheets) is proposed to be illuminated; and

WHEREAS, the signage analysis reflects that in order to improve visibility, signage must be located within the cone of vision for approaching traffic and must account for impediments to visibility; therefore, the signage should be visible from a distance of approximately 650 feet from the south along First Avenue, and should be legible from a distance of 300 feet; and

WHEREAS, the applicant states that signs above street level are primarily viewable from a distance, and signs at street level are primarily viewable within a close range, and therefore signage at the site needs to be located both above street level and at street level; and

WHEREAS, the applicant further states that because much of the heavy traffic on First Avenue consists of buses, which have heights of approximately 11'-0", signage must be located at a height above 12'-0" in order to be viewable over buses and from a distance; thus, duplicate signage must be provided above a height of 12'-0" and at street level in order to be visible for both vehicular and pedestrian traffic; and

WHEREAS, in response to the Community Board's recommendation for the elimination of redundant signage and the reduction in size of certain signage, the applicant explained that all of the requested signage is necessary in order for the entrances of the Emergency Department to be visible for both vehicular and pedestrian traffic, and to identify the Emergency Department as part of the Medical Center and separate from the other emergency departments in close proximity; and

WHEREAS, the applicant represents that the requested waivers related to the height and square footage of the proposed signage are necessary in order to satisfy the

Medical Center's programmatic needs of providing adequate way-finding and identification signage for visitors approaching the Emergency Department from First Avenue; and

WHEREAS, the Board finds that the stated programmatic needs are legitimate, and agrees that the proposed enlargement and signage are necessary to address the Medical Center's programmatic needs, given the limitations of the site; and

WHEREAS, the applicant represents that it is unable to feasibly accommodate the programmatic needs within an as-of-right building envelope, or with complying signage; and

WHEREAS, the applicant submitted building plans for a complying building, which would incorporate the existing air intake shaft that serves the air handlers in the cellar of the Tisch Hospital building, and would provide only two signs on the canopy over the entrance, and a small business address sign over the entrance; and

WHEREAS, the applicant represents that, due to the inability to remove the air intake shaft, (1) the complying development would lose approximately 3,000 gross sq. ft., one exam/treatment room and four disposition seats as compared to the Proposed Enlargement; (2) the footprint and entrance area of the complying development would be limited; (3) plan efficiency would be reduced; (4) there would be no separation of walk-in patients from ambulance patients or pediatrics patients from adult patients; (5) staff travel distances and patient waiting times would be increased; and (6) upgrades to the Emergency Department's mechanical and electrical systems would not be possible; and

WHEREAS, additionally, the minimal signage provided for the complying development would be inadequate to provide sufficient way-finding for pedestrians and drivers approaching the Emergency Department along First Avenue; and

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

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

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of the Medical Center, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Medical Center is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the Proposed Enlargement would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the Proposed Enlargement would be located among a multitude of medical institutions comprising the First Avenue "medical corridor," including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses; and

WHEREAS, the applicant further states that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, as well as two unoccupied Amtrak ventilation buildings on the northwest portion of the superblock and the Office of the New York City Medical Examiner on the southwest portion of the superblock; as such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested rear yard waiver; and

WHEREAS, specifically, the applicant represents that the rear yard waiver would not impact the Amtrak ventilation tower located to the east of the Development Site, because the Amtrak building contains only mechanical equipment, is only occupied as needed by maintenance workers, and does not have windows; and

WHEREAS, the applicant states that the exhaust louvers at the top of the shaft of the Amtrak building extend from a height of 86'-0" to the top of the building at approximately 104'-0", which is well above the top of the Proposed Enlargement's parapet wall, which has a height of 40'-2"; and

WHEREAS, the applicant further states that the Proposed Enlargement would not limit access to, or egress from, any of the Amtrak building's doors, including the emergency exit on the east side of the building; and

WHEREAS, the applicant represents that the signage associated with the Proposed Enlargement would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or the surrounding neighborhood; and

WHEREAS, the applicant represents that the Proposed Enlargement would actually improve the visual quality of the Development Site by replacing a paved parking area, ramp and entryway to the existing Emergency Department with a contemporary steel and glass curtain wall design; and

WHEREAS, the applicant states that the proposed signage would not adversely impact the surrounding neighborhood because First Avenue in the vicinity of the Medical Center campus does not have a residential character, as the closest residential use to the Development Site is located diagonally across First Avenue, at least 150 feet away; and

WHEREAS, additionally, the applicant notes that the Proposed Enlargement complies with all other bulk parameters and the use is permitted as-of-right; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center could occur on the existing site; and

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

WHEREAS, the applicant represents that the requested rear yard and signage waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the rear yard and signage relief are the minimum necessary to allow the Medical Center to fulfill its programmatic needs; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 10BSA055M, dated July 7, 2010; and

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

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

WHEREAS the applicant submitted the May 2010 Phase II Sampling Protocol and Health and Safety Plan to DEP for review and approval; and

WHEREAS, in its June 23, 2010 letter, DEP finds the Phase II Sampling Protocol and Health and Safety Plan acceptable and requested Phase II testing; and

WHEREAS, the applicant proposes to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if such hazardous materials are found, to submit a hazardous materials remediation plan, including a health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

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

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project; and

WHEREAS, based on the results of noise monitoring, the applicant proposes window-wall noise attenuation of 30 dBA on the west (First Avenue) facade of the subject building; and

WHEREAS, the proposed building design shall include central air-conditioning (as an alternate means of ventilation) to ensure that an interior noise level of 45 dBA is achieved; and

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

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

on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the enlargement of an existing community facility (New York University Langone Medical Center) that does not comply with zoning regulations for rear yard or signage, contrary to ZR §§ 24-36, 22-331 and 22-342, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 30, 2010" – eleven (11) sheets; and *on further condition*:

THAT the parameters of the Proposed Enlargement and signage shall be in accordance with the approved plans;

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

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

THAT 30 dBA of window-wall noise attenuation shall be provided on the west facade of the subject building and central air-conditioning shall be maintained as an alternate means of ventilation;

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 substantial construction shall be completed pursuant to ZR § 72-23;

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, July 13, 2010.

48-10-BZ
CEQR #10-BSA-060R
APPLICANT – Rampulla Associates Architects, for Outerbridge Commons, LP, owner; 2965 Veterans Road West, owners.
SUBJECT – Application April 9, 2010 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*). M1-1 zoning district/Special South Richmond District.
PREMISES AFFECTED – 2965 Veterans Road West, Veterans Road West and Tyrellan Avenue, Block 7511, Lots 1, 75 & 150, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Phillip Rampulla.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.…….....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 17, 2010, acting on Department of Buildings Application No. 500834485, reads in pertinent part:

> "Under Section 73-36 of the Zoning Resolution…in a (M-1) district, within an existing shopping center, the change in use of the cellar floor as a physical culture health establishment is not permitted, and therefore is referred to the Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special South Richmond Development District, a physical culture establishment (PCE) in the cellar of a one-story commercial building, contrary to ZR § 42-10; and

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

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

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

WHEREAS, the subject site is located at the corner of Veterans Road West and the West Shore Expressway, in an M1-1 zoning district within the Special South Richmond Development District; and

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

WHEREAS, the PCE will occupy 12,136 sq. ft. of floor space in the cellar, with an entrance on the first floor; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 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, 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 project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA060R, dated May 20, 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 in an M1-1 zoning district within the Special South Richmond Development District, a physical culture establishment in the cellar of a one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 12, 2010"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 13, 2020;

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

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

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

THAT 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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, July 13, 2010.

87-10-BZ

APPLICANT – Dennis D. Dell'Angelo, for David Gluck, owner.

SUBJECT – Application May 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1333 East 24th Street, east side of East 24th Street, 260' south of Avenue M, Block 7660, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 Montanez 5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 26, 2010, acting on Department of Buildings Application No. 320149870, 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 ZR 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 June 15, 2010 after due notice by publication in *The City Record*, and then to decision on July 13, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by 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 east side of East 24th Street, between Avenue M and Avenue N, 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 1,947 sq. ft. (0.49 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,947 sq. ft. (0.49 FAR) to 3,662 sq. ft. (0.92 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 64 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 2'-11" along the northern 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, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 13, 2010"-(13) sheets and "June 1, 2010"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,662 sq. ft. (0.92 FAR); an open space ratio of 64 percent; a front yard with a depth of 15'-8"; a side yard with a minimum width of 10'-7" along the southern lot line; a side yard with a minimum width of 2'-11" along the northern 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, July 13, 2010.

210-07-BZ

APPLICANT – Eric Palatnik, P.C., for Gasper Nogara, owner.

SUBJECT – Application August 30, 2007 – Variance (§72-21) to allow for a residential use in a manufacturing district, contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Luquer Street, Northern side of Luquer Street between Columbia and Hicks Streets, Block 513, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik and Barbara Cohen.

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

14-09-BZ
APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.
SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.
PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for decision, hearing closed.

44-09-BZ
APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.
SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.
PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.
COMMUNITY BOARD #2SI
APPEARANCES –
For Applicant: Phillip Rampulla.
ACTION OF THE BOARD – Off Calendar.

189-09-BZ
APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

190-09-A
APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.
SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.
PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: Eric Palatnik and Hiram Rothkrug.
ACTION OF THE BOARD – Laid over to August 24, 2010, at 1:30 P.M., for continued hearing.

192-09-BZ
APPLICANT – Richard Lobel, for Leon Mann, owner.
SUBJECT – Application June 16, 2009 – Variance (§72-21) to allow for the construction of a department store (UG10), contrary to use regulations (§§22-00, 32-00). R6 and R6/C2-3 zoning districts.
PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Elizabeth Safian.
ACTION OF THE BOARD – Laid over to September 14, 2010, at 1:30 P.M., for adjourned hearing.

234-09-BZ
APPLICANT – Sheldon Lobel, P.C., for Zenida Radoncic, owner.
SUBJECT – Application July 24, 2009 – Variance (§72-21) for the construction of a detached two-family home contrary to side yard regulations (§23-48). R-5 zoning district.
PREMISES AFFECTED – 25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of 28th Avenue. Block 715, Lot 16. Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Elizabeth Safian.
ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for continued hearing.

254-09-BZ thru 256-09-BZ
APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.
SUBJECT – Application September 4, 2009 – Variance (§72-21) to legalize three existing homes, contrary to front yard (§23-45) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Ivan F. Khoury.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

13-10-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

22-10-BZ

APPLICANT – Harold Weinberg, P.E., for RP Canarsie, LLC, owner; Sunshine Childrens Day Care, lessee.

SUBJECT – Application February 17, 2010 – Special Permit (§73-19) to allow the proposed one-story day care center (*Sunshine Day Care*). C8 zoning district.

PREMISES AFFECTED – 620 East 102nd Street, west side between Farragut Road and Glenwood Road, Block 8170, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

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

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilition and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9,11,12,23,24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most and Saul Greenberger.

For Opposition: Peter Sell, Gino Altamirano, Delwin Davis and Shebi Palathinkal.

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

39-10-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) for the legalization of a single-family home, contrary to side yards (§23-461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Bonsignore Joseph.

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

40-10-BZ

APPLICANT – Sheldon Lobel, PC, for Campworth LLC, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to allow for an existing building to be converted for commercial use, contrary to §22-10. C4-4A/R5B zoning district.

PREMISES AFFECTED – 150 Kenilworth Place, through-lot between Campus Road and Kenilworth Place, Block 7556, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

58-10-BZ

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

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

PREMISES AFFECTED –16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for decision, hearing closed.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judy Bercon.

ACTION OF THE BOARD – Laid over to August 3, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on July 25, 2000, under Calendar No. 93-00-BZ and printed in Volume 85, Bulletin No. 31, is hereby corrected to read as follows:

93-00-BZ
CEQR No. 00-BSA-108M
APPLICANT – Fredrick A. Becker, Esq., for Polester Forty-Fourth Property Associates LLC, owner; TSI West 44th Street, Inc. dba NY Sports Club, lessee.
SUBJECT – Application March 28, 2000 – under Z.R. §73-36,to permit the operation of a physical culture establishment (Use Group 9) located in portions of the cellar, first floor and second floor of a 20-story commercial office building, in a C6-4.5(Mid) zoning district contrary to Z.R.§32-00.
PREMISES AFFECTED - 19 West 44th Street, north side, 250' west of Fifth Avenue, Block 1260, Lot 24, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Fredrick A. Becker.
For Opposition: John Scrofani, Fire Department.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Caliendo.....4
Negative: 0
THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner dated March 17, 2000, acting on application number 102845735 reads;

"PROPOSED HEALTH CLUB PHYSICAL CULTURE ESTABLISHMENTS REQUIRE APPROVAL BY THE BOARD OF STANDARDS AND APPROVALS AS PER Z.R. 32-31"; and

WHEREAS, a public hearing was held on this application on June 27, 2000 after due notice by publication in the *City Record*, and laid over to July 25, 2000 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice-Chair Paul Bonfilio, R.A., Commissioner Mitchell Korbey, and Commissioner Peter Caliendo; and

WHEREAS, Community Board 5, Manhattan, has recommended approval of this application; and

WHEREAS, the applicant seeks a special permit pursuant to Z.R.§73-36 for the operation of a physical culture establishment, located in portions of the basement, first floor and second floor of a 20- story commercial office building, in a C6-4.5(Mid) zoning district requiring a special permit from the Board as per §32-00; and

WHEREAS, the total floor area of the health club is approximately 21,963 square feet, housing facilities for classes, instruction, programs for physical improvement, body building, weight reduction, aerobics or martial arts, men's and women's locker rooms, reception area, and offices; and

WHEREAS, massage services will be provided by New York State licensed masseurs and masseuses; and

WHEREAS, the subject site is located in a mixed-use area of Manhattan, characterized by commercial and residential uses; and

WHEREAS, the physical culture establishment is completely enclosed within an existing building; and

WHEREAS, the record indicates that the proposed use will not contain any potential hazards that impact on the privacy, quiet, light, and air to residential uses; and

WHEREAS, therefore, the Board finds that the continuation of the physical culture establishment use will not alter the essential character of the surrounding neighborhood nor impair its future development; and

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

WHEREAS, the Board finds that the applicant's proposal complies with the requirements of the Special Midtown District; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §73-36; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

WHEREAS, therefore, the Board has determined that the proposed action will not result in any significant environmental effects.

Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental quality Review and makes the required findings under Z.R. §73-36 and grants a special permit allowing the operation of a physical culture establishment, Use Group 9, located in portions of the basement, first floor and second floor of a 20-story commercial office building, in a C6-4.5(Mid) zoning district contrary to Z.R.§32-00, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application marked "Received March 28, 2000"-(5) sheets; and on further condition;

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 individuals practicing massage at the premises shall possess valid New York State licenses for such practice which licenses shall be prominently displayed at the premises;

THAT, fire protection measures, including an automatic wet sprinkler system connected to a Fire Department-approved central station, shall be provided and maintained in accordance with the BSA-approved plans,

THAT this special permit shall be limited to a term of ten years from the date of this grant, to expire on July 25, 2010;

THAT the above conditions shall appear on the certificate of occupancy;

THAT the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and

THAT a new certificate of occupancy shall be obtained within one year of this grant.

Adopted by the Board of Standards and Appeals, July 25, 2000.

***The resolution has been corrected to replace** "*..cellar"* **now reads:** "*basement…".* **Corrected in Bulletin Nos. 27-29 Vol. 95, dated July 22, 2010.**

***CORRECTION**

This resolution adopted on May 19, 2009, under Calendar No. 304-08-BZ and printed in Volume 94, Bulletin No. 20, is hereby corrected to read as follows:

304-08-BZ
CEQR #09-BSA-050M
APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.
SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (§33-123, §33-451, §33-453, §33-454, §33-26). C8-4 District.
PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350' feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.
COMMUNITY BOARD #8M
APPEARANCES –
For Applicant: Judy Gallent.
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 Manhattan Borough Commissioner, dated November 19, 2008, acting on Department of Buildings Application No. 110347250, reads, in pertinent part:

> "Proposed FAR does not comply with ZR Section 33-123 (Maximum Floor Area –Community Facility Buildings). Maximum Community Facility FAR permitted in C8-4 is 6.5. Proposed FAR is 8.57.
>
> Proposed tower lot coverage does not comply with ZR Section 33-454 (Towers on Small Lots). Maximum tower lot coverage permitted is 50% for a lot less than 10,500 sq. ft. in area. Proposed tower lot coverage is 59.4%.
>
> Proposed aggregate tower area within 50 feet of a narrow street does not comply with ZR Sections 33-451 and 33-453. Maximum aggregate tower area permitted within 50 feet of a narrow street is 1,875 sq. ft. Proposed tower occupies an aggregate area of 3,288.25 sq. ft. within 50 feet of a narrow street.
>
> Proposed rear yard does not comply with ZR Section 33-26 at the first, second and third floors. A minimum 20 foot rear yard is required. Proposed rear yard at 1st, 2nd and 3rd floors is less than 20 feet.

School in a C8-4 zoning district requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19"; and

WHEREAS, this is an application for a special permit under ZR §§ 73-19 and 73-03, to permit a combined 12-story middle school and high school (Use Group 3) on a site within a C8-4 zoning district, and an application under ZR § 72-21 to permit the a school building contrary to ZR §§ 33-123 (maximum floor area ratio), 33-26 (required rear yard), 33-454 (tower lot coverage), 33-451 and 33-453 (maximum aggregate tower area); and

WHEREAS, the application is brought on behalf of Trevor Day School, a nonprofit corporation ("Trevor Day"); and

WHEREAS, a public hearing was held on this application February 24, 2009, after due notice by publication in the *City Record*, and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, a number of neighborhood residents testified in favor of the application; and

WHEREAS, an adjacent owner testified in opposition to the application, citing concerns with the impact of the proposed school on his property; and

WHEREAS, the site is located in the mid-block area of the south side of East 95th Street between First Avenue and Second Avenue; and

WHEREAS, the site is located in a C8-4 zoning district and has a lot area of 10,453 sq. ft.; and

WHEREAS, the subject site is occupied by a five-story furniture factory and an adjacent two-story building which are proposed to be demolished; and

WHEREAS, the proposed 12-story combined middle school/high school (U.G. 3) (the "School") has a four-story 84-foot high base and an eight-story tower rising to a total height of 204 feet; each base floor has a floor plate of approximately 10,300 sq. ft. and each tower story has a floor plate of approximately 6,200 sq. ft.; and

WHEREAS, a cellar level houses a lower lobby, student lockers, administrative space and mechanical space; the first floor and first floor mezzanine are occupied by the auditorium; the second floor is occupied by music and band rooms; the third floor and third floor mezzanine are occupied by a double height gymnasium; the fourth floor is occupied by the cafeteria and kitchen; the fifth through eighth floors contain core classrooms and common rooms, with some offices on the sixth floor; the ninth and tenth floors contain science and fine arts classrooms and laboratories; the eleventh floor contains administrative offices and a dance studio; the twelfth floor contains a half-gymnasium; and an outdoor play area of approximately 4,839 sq. ft. is located on the roof; and

WHEREAS, the applicant seeks a variance to permit: a floor area of 101,243 sq. ft. (67,944 sq. ft. is the maximum community facility floor area permitted in a C8-4 district); an FAR of 8.57 (an FAR of 6.5 is the maximum permitted); a tower lot coverage of 59.4 percent (50 percent is the maximum permitted); an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft. (1,875 sq. ft is the maximum permitted; and a rear yard of 0'-8" (20'-0" is the minimum required); and

WHEREAS, the applicant additionally seeks a special permit because the subject site is located within a C8-4 zoning district, where Use Group 3 school use is not permitted as-of-right; and

WHEREAS, the applicant represents that the special permit and variance requests are necessitated by (i) the need to replace its existing elementary school; (ii) the need for additional space based on past and projected growth in the school's enrollment; and (iii) the need for classrooms, gymnasiums, auditorium and meeting spaces adequate in size to serve its student body; and

WHEREAS, the applicant further states that the student body is currently distributed among four buildings on the Upper East Side and Upper West Side of Manhattan: (a) a pre-school/ kindergarten located at East 89th Street; (b) an elementary school in space rented from the Church of the Heavenly Rest (the "Church"); and a middle school/ high school located at (c) 1 West 88th Street and (d) 279 Central Park West; and

WHEREAS, applicant further states that the Church has indicated an intention to recapture the space occupied by Trevor Day's elementary school in 2013 and the elementary school must therefore be relocated to an alternative space; and

WHEREAS, the applicant represents that its existing middle school/high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped and which are insufficient to accommodate projected enrollment growth; and

WHEREAS, the applicant further represents that its existing facility cannot accommodate its entire middle school or high school student body for assemblies, concerts, or school-wide meetings; and

WHEREAS, the applicant represents that the impending loss of its pre-school/kindergarten and the overcrowded, antiquated and inadequate space of its middle school/ high school render it impossible for Trevor Day to meet its programmatic needs; and

WHEREAS, development of the School will allow Trevor Day to relocate its elementary school to its building at 1 West 88th Street and to provide an auditorium, and modern and adequately-sized classrooms, gymnasiums, studios and labs to its middle/high school students; and

WHEREAS, the applicant represents that the School meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an C8-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate size, sufficient to meet the programmatic needs

of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that a building with a floor area of least 100,000 sq. ft. is necessary to accommodate Trevor Day's program; and

WHEREAS, the applicant states that the majority of its students reside on the Upper West Side and Upper East Side neighborhoods of Manhattan; and

WHEREAS, the applicant further states that Trevor Day conducted a nearly four-year site search for existing buildings or development sites within those communities for a combined middle and high school facility of adequate size to serve the School's programmatic needs; and

WHEREAS, the applicant represents that nine potential sites, including the subject site, were seriously evaluated and that additional sites were investigated and determined to be inappropriate based on their location, size, limited access to public transportation and/or purchase price; and

WHEREAS, the applicant further represents that the sites evaluated include: (i) 165 West 86th Street (West-Park Presbyterian Church); (ii) 517-523 East 73rd Street and 512-522 East 74th Street; (iii) Amsterdam Avenue between West 99th and West 100th Streets (St. Michael's Episcopal Church); (iv) West 57 Street, mid-block between 12th Avenue and 11th Avenue; (v) Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue); (vi) 23 East 91st Street (Our Lady of Good Counsel School); (vii) 515 West 57th Street; and (viii) Lexington Avenue between East 97th and East 98th Streets; and

WHEREAS; the applicant states that the potential floor area of sites at Amsterdam Avenue between West 99th and West 100th Streets, Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue), 23 East 91st Street; and Lexington Avenue between East 97th and East 98th Streets was deemed inadequate to accommodate the School; and

WHEREAS, the applicant further states that the respective locations of a Con Edison substation and Department of Sanitation garage adjacent to and across from 517-523 East 73rd Street/ 512-522 East 74th Street rendered that site unacceptable for the School; and

WHEREAS, the applicant additionally states that the owners of 515 West 57th Street and 165 West 86th Street were unwilling to transfer their properties to the School; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the School in a district where it is permitted as of right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the School is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, evidence in the record indicates that the front lot line of the site directly abuts an R8 district in which a school would be permitted as of right; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that the School fronts on East 95th Street, directly south of an R8 zoning district, and that only the sides and rear of the School will face the surrounding non-residential zoning district; and

WHEREAS, the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating window and wall construction; and

WHEREAS, the applicant represents that the School's design would include double-glazed windows in the front and rear walls and an alternate means of ventilation, and that the side walls would have no windows and be constructed of sound-attenuating masonry; and

WHEREAS the applicant further represents that window/wall attenuation would provide 35 dBA for all facades of the building and would therefore result in interior noise levels of less than 45 dBA within the School; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that East 95th Street is a narrow one-way street characterized by light traffic, and that children traveling and from the School would be protected by the diversion of most east-west through traffic to East 96th Street, one block to the north, which is a major cross street having two travel lanes in both directions; and

WHEREAS, the Board finds that the movement of the traffic through the street on which the School is located can be controlled so as the protect children traveling to and from the School; and

WHEREAS, therefore, Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the applicant states that the School is not anticipated to have a substantial adverse impact with respect to urban design and visual resources or neighborhood character; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the C1, C2 and residential zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant additionally states that the

Life Sciences High School is located on East 95th Street directly north of the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height of the School is permitted by the tower regulations of the underlying C8-4 zoning district and that a number of buildings in the surrounding area are taller than the School, including: a 28-story residential tower to its east at East 94th Street and First Avenue; a 31-story residential tower to its west at East 94th Street and Second Avenue; a 16-story residential building on East 96th Street directly north of the School; the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block; and the 32- and 30-story residential high rises on the west side of First Avenue between East 94th Street and East 92nd Street; and

WHEREAS, the applicant further represents that the School's streetfront is consistent with those of the buildings on East 95th Street on either side of the subject site; and

WHEREAS, the applicant states that the School will benefit the surrounding community by replacing a legally conforming industrial use with a school use that is more consistent with the predominant residential character of the area and which expands educational opportunities for neighborhood residents; 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, the applicant states that preparation work is under way for the Second Avenue Subway in a portion of Second Avenue from East 91st Street to East 95th Street, and that its construction over the next eight years is expected to cause street closings and other impacts that could potentially affect the School; and

WHEREAS, the applicant states, however, that because the School is located 200 feet east of Second Avenue, the requested modifications of the applicable use and bulk regulations will not interfere with the Second Avenue subway project or with any other pending public improvement project; and

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

WHEREAS, the applicants states that the requested variance of the maximum allowable floor area (and FAR), maximum tower coverage, maximum aggregate tower coverage and minimum rear yard are necessary based on the programmatic needs of Trevor Day and the site's unique subsurface conditions including groundwater level, soil and bedrock conditions;

WHEREAS, as to the programmatic needs of the School, the applicant states that they are the following: (1) relieving overcrowded and suboptimal classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) offering a varied and expanded curriculum to its students; and (4) providing gymnasium and auditorium space; and

WHEREAS, as discussed above, the applicant states that its existing middle school/ high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped; and

WHEREAS, Trevor Day has determined that additional space is needed to better serve the 365 students currently enrolled in grades 7 through 12, and also to increase its Upper School enrollment by approximately 25 percent; and

WHEREAS, the applicant states that a planning study commissioned by Trevor Day found that the school provides an average classroom area of 115 sq. ft. per student, far less than the 162 sq. ft. per student average of comparable New York City independent schools; and

WHEREAS, the applicant represents that the paucity of adequate classroom space also limits the number of elective classes it can offer its middle and high school students as well as the extracurricular functions that are an integral part of a balanced high school program; and

WHEREAS, to accommodate the projected enrollment, the applicant states that the School must have a total of 20 core classrooms and 10 special classrooms, each with a minimum size of approximately 450 sq. ft., as well as three common rooms: one for the middle school and two for the high school, each with a minimum size of approximately 2,100 sq. ft.; and

WHEREAS, to comply with New York State Department of Health regulations which mandate three physical education classes per week, the applicant further states that the School also requires two gymnasiums – a full-size gymnasium and a 4,000 sq. ft. half-gymnasium; and

WHEREAS, the applicant further states that a minimum gymnasium ceiling height of 24 feet is required to host inter-scholastic basketball games and that the School must also have a double-height auditorium to present school-wide assemblies, as well as musical and theatrical productions; and

WHEREAS, the applicant represents that, the tower coverage, aggregate tower area and rear yard waivers are necessary to provide the program space necessary to adequately serve its current student body and to prepare for a projected 25 percent increase in enrollment; and

WHEREAS, the applicant represents that without the waivers, the floor area of the School would be reduced by 21,633 sq. ft., and that the proposed auditorium, library/media center, half-gymnasium, and common room for science classrooms would consequently be eliminated and less space would be available for the cafeteria, kitchen and lobby, faculty and administrative office space, storage, and bathrooms; and

WHEREAS, the applicant represents that the tower floor plates of a complying development would be approximately 1,000 sq. ft. smaller than those in the School and, consequently, that core classrooms and common rooms would have to be moved from the tower to the base portion

of the building and be enlarged beyond what is programmatically necessary, resulting in an inefficient waste of much-needed floor area; and

WHEREAS, the applicant further states that compliance with the 23-foot height restriction for rear yard obstructions in the subject zoning district would necessitate reduction of the height of the main gymnasium below regulation size, because the rear 20 feet could have a ceiling height of only 12'-4"– too low to accommodate a backboard and rim; and

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

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

WHEREAS, the applicant represents, however, that its programmatic needs could be met on the subject site in an as-of-right building, were it not for the unique groundwater, soil and bedrock conditions that create practical difficulties and unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, a geotechnical engineering study submitted by the applicant found that: (a) subsurface water course traverses the subject site and groundwater is found at approximately nine feet below the existing sidewalk grade; and (b) the subject site is located in a former marsh area and subsurface soil consists of layers of sand, clay, peat and fine silt to depths beyond 170 feet; and

WHEREAS, the geotechnical study additionally found that, as a result of these conditions, below-grade construction would require dewatering approximately 25 to 30 feet below-grade and underpinning of adjacent buildings, and that such below-grade construction could cause damage to facades, interior finishes and structural elements and be costly; and

WHEREAS, the applicant states that three major construction firms estimated the cost of dewatering, underpinning and below-grade construction at between $9 and $17.4 million; and

WHEREAS, because of the site's soil, bedrock and groundwater conditions, the applicant states that Trevor Day is unable to locate essential educational spaces more than approximately six feet below-grade and therefore has instead located all required floor area above-grade, with the exception of one cellar floor; and

WHEREAS, because of the subject-site's unique below-grade conditions, the School must locate two of the three potential below grade levels, containing approximately 20,900 sq. ft., above grade, thereby exceeding the maximum allowable floor area; and

WHEREAS, the applicant represents that the need to construct almost all of the School's programmatically required floor area above-grade necessitates the requested variances of regulations relating to rear yard, tower lot coverage and aggregate tower area; and

WHEREAS, the applicant further represents that the requested floor area variance is required to recapture the as-of-right floor area that is lost due to the inability to construct below-grade space; and

WHEREAS, the applicant states that if the site were not burdened with its unique soil and groundwater conditions, the auditorium and gymnasium could have been located below-grade, rather than on the ground and third floors, respectively, and that a school building with a floor area virtually identical to that of the School could be built on the subject site as-of-right; and

WHEREAS, the proposed floor area of the School is 101,243 sq. ft.; and

WHEREAS, the applicant submitted plans indicating that approximately 31,360 sq. ft. of space could otherwise be developed in three additional below-grade levels, which would not be included in floor area, in addition to 67,944 sq. ft. of floor area that could be developed at the maximum allowable community facility FAR of 6.5, for a total floor area of 99,304 sq. ft.; and

WHEREAS, the applicant concludes that, as a result, Trevor Day is unable to fulfill its programmatic needs by developing the subject site with an as-of-right middle and high school building while complying with all underlying district regulations; and

WHEREAS, the Board finds that Trevor Day's programmatic needs are legitimate, and agrees that the proposed School is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions of the site, when considered in conjunction with the programmatic needs of the School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant represents that although the School is located on the site of a former industrial building, it is compatible with other residential and institutional uses in the surrounding neighborhood; and

WHEREAS, the applicant states that the land uses surrounding the site are characterized by a mix of residential, commercial, and institutional uses; and

WHEREAS, the applicant states that East 95th Street to the west and east of the subject site contains a variety of

uses including residential uses, automotive related uses, retail and manufacturing uses and that a five-story office building is located immediately to the south of the subject site; and

WHEREAS, the applicant further states that north of the subject site on East 95th Street are several residential uses, including a 16-story residential building on East 96th Street in the mid-block portion of the block ; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the residential and C1 and C2 zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the Life Sciences High School is located directly across East 95th Street from the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height and bulk of the School are compatible with the surrounding area, which is characterized by a number of additional large residential, commercial and mixed-use buildings; and

WHEREAS, the height of the School is permitted as-of-right by the tower regulations of the underlying C8-4 zoning district and a number of buildings in the surrounding area are taller than the School, including a 28-story residential tower to its east at East 94th Street and First Avenue, a 31-story residential tower to its west at East 94th Street and Second Avenue, a 16-story residential building on East 96th Street directly north of the School, the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block, and the 32-story and 30-story residential high rises occupying the block fronts on the west side of First Avenue between East 94th Street and East 92nd Street and the 38-story Normandy Court residential development located on the corner of Second Avenue and East 96th Street; and

WHEREAS, the applicant states that the requested variance of the tower lot coverage requirement allows for a tower with a slightly larger floor plate than would otherwise be permitted, thereby providing a somewhat shorter building than would be required absent the variance limiting the resulting shadows of the School on the surrounding area; and

WHEREAS, the applicant further states that a conforming community facility use could build at the subject site to a height of approximately 15 stories as-of-right under the tower bulk regulations of the subject zoning district; and

WHEREAS, the applicant states that the street wall of the School complies with the height restrictions of the C8-4 district and is consistent with the street walls of other mid-block buildings fronting on East 95th Street; and

WHEREAS, an environmental assessment indicates that the shadows cast by the School are only marginally greater than the shadows cast by a complying development, and that none of the incremental increase in shadows falls on any light sensitive elements; and

WHEREAS, a playground is located on the western half of the block directly north of the subject site between East 96th Street and East 97th Street, the shadow study demonstrates that the shadows cast by the School are blocked from falling on the playground by a 16-story building on East 96th Street located directly north of the School; and

WHEREAS, in a submission to the Board, an adjacent property owner argues that the School will block its light and air; and

WHEREAS, a submission by the applicant notes that during seven of 12 analysis periods studied, the School had no incremental shadow impacts on the adjacent property as compared to existing conditions; in two of the periods studied, the School cast the same amount of shadow as an as-of-right building; in two of the analysis periods, the School cast less shadow than an as-of-right building; and that during only one period was a small incremental shadow cast --on the northwest corner of the entrance of the adjacent building; and

WHEREAS, the adjacent owner additionally contends that as-of-right development of his property would block light from the School's classrooms; and

WHEREAS, in response, the applicant states that the School has been built without windows on its western façade abutting the lot line of the adjacent owner and that all classrooms are designed to receive light from windows located in the north and south facades of the building; and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, a submission by a neighboring owner argues that the hardship is self-imposed and urges the Board to deny the subject application; and

WHEREAS, a response by the applicant points out that, pursuant to ZR § 72-21, the purchase of a property subject to the restrictions sought to be varied does not, in and of itself, constitute a self-created hardship and is not a ground to deny the application; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for floor area, tower lot coverage, aggregate tower area and rear yard are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant further represents that without the requested variances of the maximum tower lot coverage requirement from 50 percent to 59.4 percent and the maximum allowable aggregate tower area by approximately 1,413 sq. ft., an additional four stories would be required to accommodate the School's program,

increasing the height of the building by approximately 53 feet to an as-of-right height of 279 feet; and

WHEREAS, the applicant states that development using sky exposure plane bulk regulations as an alternative to a tower would require a variance of the rear yard requirement for the full height of the building, as well as a variance to allow penetration of the sky exposure plane by four of the seven stories above the maximum street wall, in addition to a floor area variance; and

WHEREAS, the applicant states that a sky exposure plane development would be bulkier and would cast larger shadows than a more slender tower and that having atypical floors of varying depths as the building set back under the sky exposure plane would make it more difficult for Trevor Day to program the resulting space so as to meet its programmatic needs; and

WHEREAS, the applicant represents that the rear wall is angled inward instead of being extended straight up to the top of the fourth floor in order to minimize the variance requested; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA050M, dated March 2009; and

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

WHEREAS, the New York City Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a January 2007 Phase I Environmental Site Assessment; (2) a January 2007 Phase II Investigation Report; (3) a March 2009 Environmental Assessment Statement ("EAS"); (4) a March 2009 Revised Remedial Action Plan (the "Revised RAP") and Construction Health & Safety Plan (CHASP); and (5) Revised March 2009 Air Quality and Noise chapters; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, to mitigate soil vapor intrusion pursuant to the Revised RAP, a Grace Florprufe 120 vapor barrier will be applied to the underside of the foundation slabs in accordance with manufacturer specifications; and

WHEREAS, a Remedial Closure Report certified by a professional engineer must be submitted to DEP at the completion of construction to confirm the effectiveness of the vapor barrier; and

WHEREAS, the proposed project is projected to generate fewer than 100 peak hour vehicle trips and therefore would not require a mobile source air quality analysis; and

WHEREAS, no nearby emission sources were identified which would have potential impacts to the School; and

WHEREAS, a screening analysis of the School's emissions, assuming the use of No. 4 fuel oil, indicate that the proposed project would not significantly impact adjacent structures of equal or greater height; and

WHEREAS, the proposed project is not anticipated to result in significant adverse air quality impacts; and

WHEREAS, DEP has determined that sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA for all building facades are necessary to achieve an interior noise level of 45 dBA; and

WHEREAS, with the aforementioned measures, the proposed project would not result in a significant adverse noise impact; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and grants a special permit to allow, within a C8-4 zoning district, a combined middle school and high school (Use Group 3) and makes each and every one of the required findings under ZR §§ 73-19 and 72-21 and grants a variance to allow the school building, which does not comply with ZR §§ 33-123, 33-26, 33-454, 33-451 and 33-453; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 14, 2009" – (26) sheets; and *on further condition*:

THAT the parameters shall be: a floor area of 101,243 sq. ft. (FAR of 8.57); a tower lot coverage of 59.4 percent; an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft.; and a rear yard of 0'-8";

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans;

THAT the issuance of building permits shall be conditioned on the issuance of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA shall be installed on all exposed facades of the proposed building;

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

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

THAT construction shall proceed in accordance with ZR §§ 72-23 and 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 19, 2009.

The resolution has been corrected to remove *"THAT the certificate of occupancy shall state that the number of students shall be limited to 500;"*. Corrected in Bulletin Nos. 27-29, Vol. 95, dated July 22, 2010.