BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
40 Rector Street, 9th Floor, New York, N.Y. 10006.

Volume 95, Nos. 40-41 October 13, 2010

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

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

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

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

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

CONTENTS

DOCKET 625

CALENDAR of October 26, 2010
Morning 626
Afternoon 627

CONTENTS

MINUTES of Regular Meetings,
Tuesday, October 5, 2010

Morning Calendar 628
Affecting Calendar Numbers:

60-90-BZ	525 Forest Avenue, Staten Island
11-93-BZ	46-45 Kissena Boulevard, Queens
164-04-BZ	2241 Westchester Avenue, Bronx
124-05-BZ	382 Greenwich Street, Manhattan
179-07-BZ	74-21 Queens Boulevard, Queens
656-69-BZ	2617/23 Harway Avenue, Brooklyn
26-94-BZ	141 Mansion Avenue, Staten Island
322-98-BZ	300 West 125th Street, Manhattan
33-99-BZ	630 5th Avenue, Manhattan
161-00-BZ	320 East 52nd Street, Manhattan
344-03-BZ	2777 Flatbush Avenue, Brooklyn
315-08-A	246 Spring Street, Manhattan
10-10-A	1882 East 12th Street, Brooklyn
110-10-BZY	93-06 Shore Front Parkway, Queens
113-10-BZY	30-86 36th Street, Queens
125-10-A	346 Ovington Avenue, Brooklyn

Afternoon Calendar 647
Affecting Calendar Numbers:

100-10-BZ	2512 Avenue R, Brooklyn
210-07-BZ	15 Luquer Street, Brooklyn
277-07-BZ	165-35 North Conduit Avenue, Queens
98-08-BZ	583 Franklin Avenue, Brooklyn
31-09-BZ	117-04 Sutphin Boulevard, Queens
173-09-BZ	845 Broadway, Brooklyn
219-09-BZ thru 223-09-BZ	802, 804, 806, 808 and 810 East 147th Street, Bronx
234-09-BZ	25-71 44th Street, Queens
309-09-BZ	2173 65th Street, Brooklyn
35-10-BZ	144-11 77th Avenue, Queens
60-10-BZ	54 Thompson Street, Manhattan
104-10-BZ	5002 19th Avenue, aka 1880-1890 50th Street, Brooklyn
105-10-BZ	269 77th Street, Brooklyn
108-10-BZ	54-32 Myrtle Avenue, Queens
126-10-BZ	856 Remsen Avenue, Brooklyn

Correction 651
Affecting Calendar Numbers:

139-92-BZ	52-15 Roosevelt Avenue, Queens
59-08-BZ	591 Forest Avenue, Staten Island
13-10-BZ	79 Amherst Street, Brooklyn
102-10-A	48 Tioga Walk, Queens

DOCKET

New Case Filed Up to October 5, 2010

185-10-A
115 Beach 216th Street, East side Beach 216th Street 280'0 south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law. R4 district.

186-10-BZ
400-424 East 34th Street, East 34th Street, Franklin D. Roosevelt (FDR) Drive, East 30th Street and First Avenue., Block 962, Lot(s) 80,108 & 1001-1107, Borough of **Manhattan, Community Board: 6**. Variance to allow two buildings with existing hospital, contrary to use regulations. R8 district.

187-10-BZ
40-29 72nd Street, Between Roosevelt Avenue and 41st Avenue., Block 1304, Lot(s) 16, Borough of **Queens, Community Board: 2**. Variance (§72-21) to permit the legalization of a three family building which does not comply with the side yard zoning requirements (ZR §23-462(c)). R6B zoning district. R6B district.

188-10-A
9 Olive Walk, East side of Olive Walk 121.6' south of West End Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Propsed construction not fronting on a mapped street contrary to General City Law Section 36 within an R4 zoing district . R4 district.

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

CALENDAR

OCTOBER 26, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 26, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1493-61-BZ, 1495-61-BZ, 1497-61-BZ, 1499-61-BZ, 1501-61-BZ
APPLICANT – Bryan Cave LLP, for London Terrace Gardens, owner.
SUBJECT – Application August 12, 2010 – Pursuant to §11-411 for an Extension of Term for transient parking in a multiple dwelling building which expired on February 27, 2002; waiver of the rules. R8A zoning district.
PREMISES AFFECTED – 415, 425, 435, 445, 455 West 23rd Street, aka 420, 430, 440, 450, 460 West 24th Street, West 23rd Street, West 24th Street, 125 feet west of Ninth Avenue, 125 feet east of Tenth Avenue. Block 721, Lot 7. Borough of Manhattan.
COMMUNITY BOARD #4M

242-09-A
APPLICANT – NYC Board of Standards and Appeals
Owner: One for the Money, LLC.
SUBJECT – Application August 13, 2009 – Dismissal for Lack of Prosecution – Appeal seeking a common law vested right to continue construction commenced under the prior R7-2/C2-5 Zoning district. R7-A/C2-5 Zoning District.
PREMISES AFFECTED – 75 First Avenue and 77-81 First Avenue, corner lot on the west side of First Avenue between East 4th Street and East 5th Street, Block 446, Lots 29, 30, Borough of Manhattan.
COMMUNITY BOARD #3M

APPEALS CALENDAR

116-10-BZY
APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.
SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.
PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.
COMMUNITY BOARD #1Q

132-10-A
APPLICANT – Adam Leitman Bailey, P.C., for N & J Associates, owner; Ariza, LLC, lessee.
SUBJECT – Application July 28, 2010 – Appeal challenging Department of Buildings determination not to reinstate revoked permits and approval based on failure to provide owner authorization in accordance with Section 28-104.8.2 of the Administrative Code . C4-6A zoning district.
PREMISES AFFECTED – 105 West 72nd Street, 68 feet west of corner formed by Columbus Avenue and West 72nd Street. Block 1144, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #6M

133-10-A
APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Brian Murphy, lessee.
SUBJECT – Application July 29, 2010 – Proposed 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 – 20 Suffolk Walk, west side of Suffolk Walk, 65.10' south of West End Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

139-10-A
APPLICANT – Gary D. Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Marcella and Joseph Freisen, lessee.
SUBJECT – Application August 9, 2010 – Proposed reconstruction and enlargement of an existing single family home not fronting a mapped street contrary to General City Law 36 and the proposed upgrade of an existing non-conforming private disposal system partially in the bed of a service road is contrary to Buildings Department Policy. R4 Zoning District.
PREMISES AFFECTED – 29 Roosevelt Walk, east side of Roosevelt Walk 490' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.
COMMUNITY BOARD #14Q

OCTOBER 26, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 26, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

68-10-BZ
APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.
SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building contrary to use regulations ZR §22-00. R5 zoning district.
PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.
COMMUNITY BOARD #9Q

117-10-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Rhond Mizrahi and Garv Mizrahi, owners.
SUBJECT – Application June 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to side yards (§23-461) and less than the required rear yard (§23-47). R-5 zoning district.
PREMISES AFFECTED – 1954 East 14th Street, west side of East 14th Street, between Avenue S and Avenue T, Block 7292, Lot 28, Borough of Brooklyn.
COMMUNITY BOARD #15BK

134-10-BZ
APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.
SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (ZR §43-12), height (ZR §43-43), and use (ZR §42-10) regulations. M1-1 zoning district.
PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.
COMMUNITY BOARD #6BK

148-10-BZ
APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.
SUBJECT – Application August 11, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141), side yards (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED –1559 East 29th Street, Between Avenue P and Kings Highway. Block 7690, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, OCTOBER 5, 2010
10:00 A.M.

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

SPECIAL ORDER CALENDAR

60-90-BZ
APPLICANT – EPDSCO, Incorporated for Nissim Kalev, owner.
SUBJECT – Application May 18, 2010 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (*Citgo*) and Automotive Repair Shop which expired on February 25, 2001; Waiver of the Rules. C2-1/R3X zoning district.
PREMISES AFFECTED – 525 Forest Avenue, north side of Forest Avenue between Lawrence Avenue and Davis Avenue, Block 148, Lot 29, Borough of Staten Island.
COMMUNITY BOARD #1SI
APPEARANCES –
For Applicant: 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 for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for an automotive service station, which expired on February 26, 2001; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 14, 2010, and then to decision on October 5, 2010; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with the condition that the extension of term be limited to 15 years from the expiration of the previous term; and

WHEREAS, the site is located on the north side of Forest Avenue between North Mada Avenue and Davis Avenue, within a C2-1 (R3X) zoning district; and

WHEREAS, the site is currently occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1937 when, under BSA Cal. No. 385-36-BZ, the Board granted a variance to permit the extension of an existing gasoline service station; and

WHEREAS, most recently, on February 26, 1991, under the subject calendar number, the Board granted an application for a special permit under ZR § 73-211 to allow an automotive service station at the site for a term of ten years, which expired on February 26, 2001; and

WHEREAS, the applicant now seeks to extend the term; and

WHEREAS, at hearing, the Board directed the applicant to remove the container located at the northeast corner of the site, to provide landscaping along the eastern lot line to replace the planting strip that was removed, and to modify the parking plan on the site to make it more orderly; and

WHEREAS, in response, the applicant submitted a revised site plan and photos reflecting that the container has been removed from the site, planters have been installed along the eastern lot line, and the parking plan has been modified to increase the number of accessory parking spaces along the western lot line from five to eight; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens,* and *amends* the resolution, dated February 26, 1991, so that as amended this portion of the resolution shall read: "to extend the term for a period of 15 years from the expiration of the prior grant, to expire on February 26, 2016; *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 18, 2010'- (3) sheets, 'Received September 7, 2010'- (2) sheets; and 'Received September 24, 2010'- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on February 26, 2016;

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

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 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. 510046709)

Adopted by the Board of Standards and Appeals, October 5, 2010.

11-93-BZ
APPLICANT – Sheldon Lobel, P.C., for Joykiss Management, LLC, owner.
SUBJECT – Application March 26, 2009 – Extension of Term (§11-411 & §11-412) to allow the continued operation of an Eating and Drinking establishment (UG 6) which expired on March 15, 2004; Amendment to legalize

alterations to the structure; Waiver of the Rules. C2-2 and R3-2 zoning districts.
PREMISES AFFECTED – 46-45 Kissena Boulevard, aka 140-01 Laburnum Avenue, Northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Elizabeth Safien.
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 of a previous grant for the operation of a restaurant (Use Group 6) in a C2-2 (R3-2) zoning district, which expired on March 15, 2004, and an amendment to legalize minor modifications to the approved plans, pursuant to ZR §§ 11-411 and 11-412; 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, June 8, 2010, July 27, 2010 and September 14, 2010, and then to decision on October 5, 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 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) zoning district; and

WHEREAS, the subject site has a total lot area of 40,830 sq. ft.; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, the applicant now seeks to extend the term for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant also seeks an amendment to permit changes to the previously approved plans; and

WHEREAS, the applicant initially proposed to legalize the following modifications to the previously approved plans: (i) the modification of internal partitions on the ground floor; (ii) the addition of an overhang at the rear of the building; (iii) the replacement of the building façade, which resulted in an increase in the street wall height; (iv) an extension to the rear of the building; (v) the construction of a mezzanine floor within the existing building; and (vi) the construction of a bulkhead and skylight on the roof of the building; and

WHEREAS, the Board notes that it is authorized to grant enlargements to buildings that were the subject of a use variance granted prior to December 15, 1961 pursuant to ZR § 11-412, but that "no structural alterations, extensions or enlargements shall be authorized for a new-non-conforming use authorized under the provisions of Section 11-413 (Change of use);" and

WHEREAS, the Board notes that a new non-conforming use was authorized at the site under the prior grant on March 15, 1994, when the Board permitted the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking pursuant to ZR § 11-413; therefore, the Board is not authorized to grant any enlargements for the subject building; and

WHEREAS, accordingly, the Board directed the applicant to remove the enlargements located at the rear of the building, the mezzanine and the bulkhead, as these areas contributed to floor area and were therefore impermissible enlargements under ZR § 11-412; and

WHEREAS, in response, the applicant agreed to remove the enlargements at the rear of the building, the mezzanine, and the bulkhead, and submitted revised plans reflecting the removal of those portions of the building; and

WHEREAS, the applicant also submitted demolition plans reflecting the removal of the extension that was constructed at the rear of the building; and

WHEREAS, the applicant represents that the other requested modifications are permissible because they fit within the ZR § 12-10 definition of "incidental alterations," and pursuant to ZR § 11-412, "repairs or incidental alterations" may be made regardless of whether a new non-conforming use was authorized under ZR §11-413; and

WHEREAS, the Board agrees that the remaining modifications to the approved plans, specifically the alteration of the internal partitions on the ground floor, the open overhang at the rear of the building, and the replacement of the façade of the building are appropriately classified as "incidental alterations" pursuant to ZR § 12-10, and therefore are permissible modifications under ZR § 11-412; and

WHEREAS, the Fire Department submitted a letter stating that the applicant has been obtaining public assembly permits for both a restaurant (Use Group 6) and a catering establishment (Use Group 9), contrary to the prior Board

approval; and

WHEREAS, in response, the applicant states that the building is being used solely as a restaurant (Use Group 6); and

WHEREAS, the applicant submitted an affidavit from the owner and operator of the site, describing the operation of the facility and stating that the building is operated as a restaurant and not a catering establishment, that all the food prepared in the kitchen is consumed at the restaurant or picked up at the take-out window, and that the party rooms in the building are used for gatherings of larger parties which takes place approximately three to four times per month; and

WHEREAS, the Board finds the information submitted by the applicant to be sufficient to establish that the site operates as a restaurant (Use Group 6) rather than a catering establishment (Use Group 9); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 15, 1994, to permit an extension of term for a period of ten (10) years from the expiration of the previous grant, to expire on March 15, 2014, and to permit the noted modifications to the approved plans pursuant to ZR §§ 11-411 and 11-412; *on condition* that any and all use shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received June 7, 2010"- (2) sheets, and "Received September 29, 2010"-(1) sheet; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on March 15, 2014;

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking;

THAT all signage shall comply with C2 zoning district regulations;

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

THAT a new certificate of occupancy shall be obtained by October 5, 2011;

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

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

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.

(DOB Application No. 400475776)

Adopted by the Board of Standards and Appeals, October 5, 2010.

164-04-BZ

APPLICANT – Sheldon Lobel, P.C., 2241 Westchester Avenue Realty Corporation, owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application April 5, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted physical culture establishment (*Planet Fitness*) which expired on February 7, 2007; Amendment to change operator, hours of operation and interior modification; Waiver of the Rules. C2-1/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue, northwest corner of Westchester Avenue and Glebe Avenue, Block 3963, Lot 57, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:..0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy for a previously granted special permit for a physical culture establishment (PCE), which expired on February 7, 2007, and an amendment to reflect a change in the operator of the PCE, interior modifications, and a change in the hours of operation of the PCE; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on August 3, 2010 and September 14, 2010, and then to decision on October 5, 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 10, Bronx, recommends disapproval of this application, based on the following primary concerns: (i) the PCE operates 24 hours per day, contrary to the prior grant; (ii) the PCE is not equipped with a fire alarm and sprinkler system; (iv) a uniformed security officer is not on site during the PCE's hours of operation; (v) an on-site manager is not always present during the PCE's hours of operation; (vi) the windows should be tinted to prevent glare and negative effects on adjacent residences; (vii) the parking lot and perimeter of the building are not cleaned on a regular basis of trash and snow accumulation; and (viii) that signage should be posted throughout the PCE advising patrons that they should be respectful of their neighbors; and

WHEREAS, certain neighborhood residents provided oral testimony in opposition to this application; and

WHEREAS, the PCE is located on the northwest corner

of Westchester and Glebe Avenues, within a C2-1 (R6) zoning district; and

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

WHEREAS, the PCE occupies 13,084 sq. ft. of floor area at the second floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 2006 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years from July 15, 2004, to expire on July 15, 2014; a condition of the grant was that a certificate of occupancy be obtained within one year, which expired on February 7, 2007; and

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

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Planet Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, the applicant also seeks an amendment to legalize minor interior modifications to the PCE, including: (i) a decrease in the PCE floor area from 13,837 sq. ft. to 13,084 sq. ft.; (ii) the reconfiguration of the reception counter, fitness rooms and locker rooms within the second floor; (iii) removal of the second floor's additional restrooms, office space, and steam rooms within the locker rooms, as well as the associated partitions; and (iv) minor signage changes to the frontages along Westchester Avenue and Glebe Avenue; and

WHEREAS, the applicant also seeks an amendment to legalize the change in the hours of operation of the site to 24 hours per day; the hours of operation approved in the prior grant were Monday through Friday, from 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, at hearing, the Board directed the applicant to revert to the approved hours of operation and to respond to the issues raised by the Community Board; and

WHEREAS, in response, the applicant provided photographs of signage that has been installed at the site reflecting that a manager is on duty, that the parking lot is for PCE patrons only, that Glebe Avenue is a one-way street, that guests must present photo ID upon signing in, and requesting that PCE patrons "Please be courteous to our neighbors and keep noise at a minimum;" and

WHEREAS, the applicant also submitted letters from contractors stating that a fire alarm and sprinkler system have been installed and all the necessary paperwork has been filed at the Department of Buildings; and

WHEREAS, the applicant states that window tinting has been installed to reduce light emission from the PCE, a uniformed parking attendant will be provided and the PCE has security guards positioned throughout the facility; and

WHEREAS, the applicant also submitted photographs reflecting that the PCE revised its hours of operation to Monday through Thursday, from 5:00 a.m. to 12:00 a.m., Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, however, the applicant represents that the reduction in hours creates a hardship for the business and that 24-hour weekday access is the cornerstone of the PCE's business model, and therefore requests that the Board grant the requested amendment to permit the PCE to operate 24 hours daily; and

WHEREAS, the Board notes that there is significant community opposition to the proposed amendment to change the hours of operation to 24 hours per day, and finds it appropriate to limit the PCE to its current hours of operation; and

WHEREAS, the Board further notes that the term of the grant expires on July 15, 2014, and the applicant is not barred from seeking to amend the grant to extend its hours of operation at a later date; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy and the amendments to permit a change in the operator of the PCE and to allow minor interior modifications to the previous grant are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 7, 2006, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for one year from the date of this grant, to expire on October 5, 2011, and to permit the noted change in operator of the PCE and the noted modifications to the approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 5, 2010'- (4) sheets; and *on further condition*:

THAT the hours of operation of the PCE shall be: Monday through Thursday, from 5:00 a.m. to 12:00 a.m.; Friday, from 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

THAT the site shall be maintained free of garbage and debris

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

THAT a certificate of occupancy shall be obtained by October 5, 2011;

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 210053378)

Adopted by the Board of Standards and Appeals, October 5, 2010.

124-05-BZ
APPLICANT – Deirdre A. Carson, for The Estate of Armand P. Arman c/o 482 Greenwich, LLC, owner; 482 Greenwich, LLC (Joint Venture Partner), lessee.
SUBJECT – Application June 15, 2010 – Amendment to a Variance (§72-21) for the construction of a mixed-use building to allow an increase in dwelling units, increase in street wall height and reduction of overall building height; Extension of Time to Complete Construction which expires on September 12, 2010. C6-2A zoning district.
PREMISES AFFECTED – 482 Greenwich Street, northwest intersection of Greenwich and Canal Streets, Block 595, Lot 52, 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, this is an application for a reopening, an extension of time to complete construction, which expired on September 12, 2010, and an amendment to a previously granted variance which permitted, in a C6-2A zoning district, the construction of an 11-story mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in *The City Record*, with a continued hearing on September 21, 2010, and then to decision on October 5, 2010; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, certain members of the community provided oral and written testimony in opposition to the applicant's proposal to increase the street wall height of the building along Canal Street and Greenwich Street from 60 feet to 85 feet; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Greenwich Street and Canal Street, within a C6-2A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 12, 2006 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district, the construction of an 11-story mixed-use residential/commercial/community facility building with ten dwelling units, a street wall height of 60 feet, and an overall building height of 120 feet, which did not comply with applicable zoning requirements for lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24 and 13-142(a); and

WHEREAS, the applicant now proposes the construction of a nine-story mixed-use residential/commercial/community facility building with 19 dwelling units, a street wall height of 85 feet, and a total height of 109 feet, which eliminates the waiver related to the parking area size, but requires an additional waiver pursuant to ZR § 35-24(b)(2) for the articulation of the street wall; and

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

WHEREAS, the applicant represents that construction at the site was delayed due to financing issues, which have since been resolved; and

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

WHEREAS, specifically, the applicant requests that the Board permit the following modifications to the approved plans, which will either reduce or eliminate a non-compliance that was approved in the prior grant: (i) a reduction in the lot coverage from approximately 97 percent to 91.5 percent; (ii) an increase in the size of the non-complying side yard, from 130 sq. ft. to 223 sq. ft.; (iii) the compliance of the two dormers within the required setback area on Canal Street and Greenwich Street, respectively; and (iv) a reduction in the number of cars in the garage to two and a reduction in the area devoted to the garage to 358 sq. ft.; and

WHEREAS, the applicant also requests that the Board permit the following modifications to the approved plans, which may increase certain elements of the building, but which are all permitted as-of-right in the underlying zoning district: (i) an increase in the total floor area of the building from 20,255 sq. ft. (6.33 FAR) to 20,346 sq. ft. (6.44 FAR), with a corresponding increase in the residential floor area from 18,878 sq. ft. to 19,023 sq. ft., an increase in the commercial floor area from 963 sq. ft. to 996 sq. ft., and a decrease in the community facility floor area from 413 sq. ft. to 327 sq. ft.; (ii) an increase in the street wall height of the building from 60 feet to 85 feet; (iii) an increase in the number of dwelling units from ten to 19; (iv) a reduction in the number of stories in the building from 11 to nine; and (v) a decrease in the total building height from 120 feet to 109 feet; and

WHEREAS, at hearing, the Board requested that the applicant consider whether a portion of the Greenwich Street street wall could be reduced in height to 60 feet adjacent to the property at 484 Greenwich Street; and

WHEREAS, in response, the applicant states that reducing the street wall height would undermine the primary design objectives for the building and would introduce a new non-compliance in the form of a non-complying outer court; and

WHEREAS, further, the applicant notes that such a change would compromise the efficiency and unit size of the building and required the reallocation of square footage to the top of the building, thereby undermining the feasibility of the units; and

WHEREAS, the applicant notes that the proposed envelope of the building is permitted as-of-right in the underlying zoning district; and

WHEREAS, finally, the applicant requests that the Board permit the following modifications to the approved plans, which result in an increase in the degree of non-compliance from the previous grant: (i) the articulation of the street wall of the building along Canal Street and Greenwich Street to cut the corner at the intersection; and (ii) the reduction in the distance between the curb cut for the garage and the intersection at the corner from 34'-3 ¾" to 23'-10 ¾"; and

WHEREAS, the applicant states that the articulation of the street wall along Canal Street will begin 18'-5" from the intersection of Canal Street and Greenwich Street, contrary to ZR §35-24(b)(2); and

WHEREAS, the Board notes that the applicant submitted an objection from the Department of Buildings ("DOB") for the non-compliance related to ZR § 35-24(b)(2); and

WHEREAS, the applicant states that this modification is necessary to increase the functionality of the building and states that a cut corner was requested by the community during the hearing process for the prior grant; and

WHEREAS, the applicant states that pursuant to ZR § 13-142(a), the prohibition of the placement of a curb cut within 50 feet of a corner can be waived at the discretion of the Commissioner of DOB; and

WHEREAS, however, the applicant represents that such a waiver was granted by the Board for the prior building conditions and that the same conditions that warranted the granting of relief in the first instance still pertain and have actually been enhanced by the reduction in the number of cars that the garage will accommodate and the cutting of the corner, which will increase visibility of the garage entrance to vehicles approaching the intersection from the southwest; and

WHEREAS, at hearing, the Board requested that the applicant reconsider the width and location of the proposed curb cut on Greenwich Street; and

WHEREAS, in response, the applicant reduced the width of the curb cut from 22 feet to 19 feet and relocated it from approximately 24 feet from the intersection to approximately 27 feet from the intersection; and

WHEREAS, the applicant also states that the curb cut will not generate many trips since it will only service two cars, that the subject portion of Greenwich Street is not heavily trafficked, and that cars that turn onto Greenwich Street will have a clear line of sight from the intersection to the point at which cars would enter and leave the garage; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 12, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of time to complete construction for a term of four years, to expire on September 12, 2014, and to permit the noted modifications to the approved plans, including the articulation of the street wall along Canal Street beginning 18'-5" from the intersection of Canal Street and Greenwich Street; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received July 30, 2010"-(5) sheets, "Received August 10, 2010"-(2) sheets, "Received August 11, 2010"-(1) sheet, and "Received September 7, 2010"-(2) sheets ; and *on further condition*:

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

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

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

(DOB Application No. 120051521)

Adopted by the Board of Standards and Appeals, October 5, 2010.

179-07-BZ

APPLICANT – Sheldon Lobel, PC, for 74-21 Queens Boulevard, LLC, owner.

SUBJECT – Application July 13, 2007 – Dismissal for Lack of Prosecution - Variance (§72-21) to allow a seven-story hotel building contrary to floor area regulations (§33-122). C8-1 zoning district.

PREMISES AFFECTED – 74-21 Queens Boulevard, located on north of Queens Boulevard, 25' from the intersection of Queens and 76th Street, Borough of Queens.

COMMUNITY BOARD #4Q

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, the decision of the Queens Borough Superintendent, dated November 12, 2008, acting on Department of Buildings Application No. 402590790, reads in pertinent part:

"Proposed hotel use group 5 in C8-1 exceeds max permitted F.A.R. contrary to section 33-122."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C8-1 zoning district, the construction of a hotel building which does not comply with the zoning regulations for floor area ratio, contrary to ZR § 33-122; and

WHEREAS, the variance application was filed on July 13, 2007; and

WHEREAS, on August 29, 2007, Board staff referred the application to the NYC Department of Environmental Protection for Hazardous Materials, Air Quality and Noise review; and

WHEREAS, on September 12, 2007, Board staff issued a Notice of Comments requesting that the applicant submit the following: (1) a revised Statement of Facts and Findings; (3) a revised economic analysis; (4) revised plans; and (5) a revised zoning analysis sheet; and

WHEREAS, on August 8, 2008, the applicant responded to the Notice of Comments; however, the zoning text had been amended to require parking lot landscaping and maneuverability; and

WHEREAS, on October 9, 2008, a second Notice of Comments was sent to the applicant notifying him to amend the plans to comply with these new zoning regulations; and

WHEREAS, on October 17, 2008, the Department of Environmental Protection signed off on Air Quality and Noise review and requested a Phase II to further review Hazardous Materials; and

WHEREAS, the Board did not receive any subsequent response from the applicant on Hazardous Materials; and

WHEREAS, on November 20, 2008, the applicant responded to the second Notice of Comments; and

WHEREAS, on November 24, 2008, Board staff notified the applicant that the response did not comply with the new zoning regulations; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, on April 10, 2009, staff issued a letter notifying the applicant that if no correct response to the second Notice of Comments was received within 45 days of the letter, the Board would schedule a dismissal hearing; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the calendar for dismissal; and

WHEREAS, on August 24, 2010, the Board sent the applicant a notice stating that the case had been put on the October 5, 2010 dismissal calendar; and

WHEREAS, the applicant did not appear at the hearing on October 5, 2010; 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. 179-07-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, October 5, 2010.

656-69-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLC, for JVM Company, LLC, owner.

SUBJECT – Application May 6, 2010 – Extension of Term of a (UG9) parking lot accessory to an existing funeral home establishment which expired on May 27, 2010; Extension of Time to obtain a Certificate of Occupancy; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 2617/23 Harway Avenue, aka 208/18 Bay 43rd Street. North west corner Harway Avenue and Bay 43rd Street. Block 6897, Lots 1 & 2, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

Negative:..0

ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

26-94-BZ

APPLICANT – Rampulla Associates Architects, for Joseph D'Alessio, owner.

SUBJECT – Application July 29, 2010 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment which expires on June 6, 2011. C3A (SSRD) zoning district.

PREMISES AFFECTED –141 Mansion Avenue, west of McKee Avenue, Block 5201, Lot 33, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

322-98-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HUSA Management Company, LLC, owner; TSI West 125 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application May 26, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on March 23, 2009; Amendment

to legalize the increase in floor area; Waiver of the Rules. C4-4(125) zoning district.
PREMISES AFFECTED – 300 West 125th Street, south side of West 12th Street between Saint Nicholas Avenue and Fredericks Douglas Boulevard, Block 1951, Lots 22, 25, 27, 28, 29, 33, 39, Borough of Manhattan.
COMMUNITY BOARD #10M
APPEARANCES –
For Applicant: Fredrick A. Becker.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez..5
Negative:..0
ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

33-99-BZ
APPLICANT – Rothkrug, Rothkrug & Spector, for RCPI Trust, owner; Talla New York Incorporated, lessee.
SUBJECT – Application June 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*The Sports Club/LA*) which expired on January 11, 2010; waiver of the rules. C5-3(MID) zoning district.
PREMISES AFFECTED – 630 5th Avenue, block bounded by 5th Avenue, East 50th Street and Rockerfeller Plaza, Block 1266, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez..5
Negative:..0
ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for decision, hearing closed.

161-00-BZ
APPLICANT – Stuart A. Klein, Esquire, for Stellar Sutton, LLC, owner; Mario Badescu Skin, Incorporated, lessee.
SUBJECT – Application June 9, 2010 – Extension of Term of a previously granted Variance (§72-21) for the operation of a Physical Culture Establishment (*Bodescu Skin Care*) which expired on June 2, 2010; Extension of Time to obtain a Certificate of Occupancy. R8B zoning district.
PREMISES AFFECTED – 320 East 52nd Street, between 1st and 2nd Avenue, Block 1344, Lot 41, Borough of Manhattan.
COMMUNITY BOARD #6M
APPEARANCES –
For Applicant: Jay Goldstein.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez..5
Negative:..0
ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for decision, hearing closed.

344-03-BZ
APPLICANT – Goldman, Harris LLC, for City of New York, owner; Nick's Lobster House, lessee.
SUBJECT – Application August 11, 2010 – Extension of Term of a Special Permit (§73-242) permitting an eating and drinking establishment which expired on July12, 2010. C3 zoning district.
PREMISES AFFECTED – 2777 Flatbush Avenue, between Flatbush and Mill Basin, Block 8591, Lot p/o 980, p/o 175, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Vivien Krieger.
ACTION OF THE BOARD – Laid over to October 19, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

315-08-A
APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC, owner.
SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceeding of maximum permitted floor area. M1-6 zoning.
PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Jay Goldstein.
For Opposition: John E-Bene.
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
RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated November 24, 2008 by the New York City Department of Buildings ("DOB") (the "Final Determination"), with respect to New Building Application No. 104403324; and

WHEREAS, the Final Determination states, in pertinent part:

> "The New York City Department of Buildings ("DOB") re-confirms its issuance of the above-referenced permit and approval of the post-approval amendment ("PAA") to this permit on August 22, 2008. Should you wish to challenge DOB's actions with regard to this permit, you may consider this

letter a final determination on the validity of the permit and PAA for purposes of bringing an appeal to the Board of Standards and Appeals"; and

WHEREAS, a public hearing was held on this appeal on November 17, 2009, after due notice by publication in *The City Record*, with continued hearings on November 24, 2009, January 26, 2010 and July 27, 2010, and then to decision on October 5, 2010; and

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

WHEREAS, this appeal concerns the construction of a 44-story condominium hotel with 420 individual units in an M1-6 zoning district (the "Building"); and

WHEREAS, the appeal is brought on behalf of the SoHo Alliance, a membership organization of persons who live and work in the SoHo community (the "Appellant"); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 246 Spring Street (the "Owner") have been represented by counsel throughout this Appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 17, 2007, DOB issued New Building Permit No. 104403324 (the "Building Permit") for a proposed transient hotel at the subject site; and

WHEREAS, on October 30, 2007, the Appellant filed an appeal with the Board under BSA Cal. No. 247-07-A, arguing that DOB should revoke the Building Permit for the following reasons: (i) the length of stay permitted to unit owners violates the Zoning Resolution (the "ZR") and the New York City Administrative Code; (ii) individual ownership of units violates the ZR; (iii) DOB and the City cannot enforce against illegal residential use of the condominium hotel units; and (iv) that DOB acted inconsistently in approving the Building Permit; and

WHEREAS, on May 6, 2008, the Board denied the appeal under BSA Cal. No. 247-07-A, based on its determination that the Building, as proposed, complied with the criteria for a transient hotel in an M1-6 zoning district and that there was no basis for the revocation of the permit; and

WHEREAS, the Appellant subsequently filed an Article 78 action (SoHo Alliance, Inc. v. City of New York) to challenge the Board's denial of the appeal, in which the Appellate Division upheld the Board's determination; and

WHEREAS, on August 22, 2008, DOB approved a post-approval amendment which involved the addition of the 43rd and 44th floors to the Building; and

WHEREAS, on September 18, 2008 the Appellant submitted a letter to DOB requesting that it revoke the Building Permit on the basis that the plans filed indicated a floor area exceeding that permitted under the applicable zoning regulations; and

WHEREAS, in response, DOB issued the Final Determination on November 24, 2008, denying Appellant's request to revoke the Building Permit; and

WHEREAS, on December 23, 2008, the Appellant filed the subject appeal; and

ISSUES PRESENTED

WHEREAS, the Appellant asserts that the Building exceeds the maximum allowable floor area and, therefore, DOB should revoke the Building Permit; and

WHEREAS, the Appellant makes the following primary arguments in support of its position that DOB should revoke the Building Permit: (i) the elevator shafts and stairwells at the fourth floor were improperly deducted from the floor area calculations; (ii) excessive deductions were taken for the loading berths; and (iii) the swimming pool service process equipment and electric meter rooms were improperly deducted as mechanical equipment; and

WHEREAS, the Appellant makes several additional arguments in support of its position that the Building Permit should be revoked, including: (i) that the curb level elevations for the new building are calculated only for a portion of the zoning lot, contrary to the ZR § 12-10 definition of "curb level;" (ii) that no survey was provided to establish the zoning lot areas for different portions of the site, including the portion occupied by 145 Sixth Avenue, an existing building on the zoning lot; and (iii) that without the plans for the proposed work at 145 Sixth Avenue, it is not possible to confirm the accuracy of the attributable floor areas in determining floor area ratio ("FAR") compliance; and

WHEREAS, the Appellant initially submitted several arguments related to the permit issued for the enlargement of the adjacent building on the subject zoning lot, 145 Sixth Avenue (Alteration Permit No. 104351979), including concerns related to the zoning computations, and the inclusion and dimensions of a greenhouse; and

WHEREAS, the Appellant made additional arguments, regarding deductions taken on the first through sixth floors and the classification of certain uses in the Building as non-accessory, based on amended plans that were submitted by the Owner during the course of the hearing process (the "Revised Plans"); and

WHEREAS, the Board notes that the Appellant failed to submit a final determination from DOB either for the issues related to the permit for 145 Sixth Avenue or the issues related to the Revised Plans and, thus, the Appellant's concerns regarding those issues are not properly before the Board within the context of the subject appeal; and

WHEREAS, accordingly, the Board acknowledges the Appellant's arguments associated with both 145 Sixth Avenue and the Revised Plans, but does not analyze or reach a determination on any of them in the absence of a final determination from DOB; and

THE ZONING RESOLUTION'S DEFINITION OF FLOOR AREA

WHEREAS, ZR § 12-10 (titled "Definitions") provides the definition for "Floor Area," and reads, in pertinent part:

> 'Floor area' is the sum of the gross areas of the several floors of a *building* or *buildings*, measured from the exterior faces of exterior walls or from the center lines of walls separating two *buildings*. In particular, *floor area* includes:
>
> ***

(b) elevator shafts or stairwells at each floor;

***

(o) any other floor space not specifically excluded. However, the *floor area* of a *building* shall not include:

***

(7) floor space used for *accessory* off-street loading berths, up to 200 percent of the amount required by the applicable district regulation;

(8) floor space used for mechanical equipment

DISCUSSION

A. Elevator Shafts and Stairwells on a Mechanical Floor

WHEREAS, in support of its assertion that the elevator shafts and stairwells on the fourth floor should be included in the floor area calculations, the Appellant makes the following arguments: (i) the ZR text is unambiguous and states that those spaces count towards floor area; (ii) DOB does not have the authority to narrow a definition contained in the ZR; and (iii) even if there is a longstanding DOB practice of excluding elevator shafts and stairwells on a mechanical floor, it does not legitimize such an incorrect interpretation; and

WHEREAS, in response, DOB makes the following arguments with which the Owner concurs: (i) the inclusion of elevator shafts and stairwells in the floor area calculations on a mechanical floor would lead to an absurd result; (ii) DOB, as the agency that administers and enforces the ZR, has the authority to narrow the definition of otherwise clear language to further the purpose of the ZR; and (iii) DOB's longstanding and consistent practice has been to exclude elevator shafts and stairwells on mechanical floors from the floor area calculations; and

WHEREAS, in addition to the arguments set forth by DOB, the Owner also asserts that DOB's interpretation is necessary to account for relevant advances in technology and approaches to building design that allow for a wholly mechanical floor; and

1. Interpretation of the ZR Text

WHEREAS, in its analysis of the appropriateness of floor area deductions for elevator shafts and stairwells on the Building's fourth floor – a mechanical floor – the Appellant relies on the plain meaning doctrine; and

WHEREAS, the Appellant, citing Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997), asserts that the plain language of the ZR § 12-10 definition of floor area is unambiguous, and that under applicable New York law on statutory interpretation, DOB may not go outside the text to interpret the ZR's unambiguous language; and

WHEREAS, the Appellant notes that the definition of floor area under ZR § 12-10 is subdivided into two lists, one which includes those areas that count towards floor area, and one which includes those areas which are not deemed floor area; and

WHEREAS, the Appellant asserts that the plain language of the ZR requires the inclusion of the elevator shafts and stairwells at the fourth floor of the Building in the floor area calculation because the text specifically lists as floor area "elevator shafts or stairwells at each floor" and "any other floor space not specifically excluded," and the list of exemptions does not include any reference to elevator shafts or stairwells; and

WHEREAS, the Appellant cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 76, "[w]here words of a statute are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation;" and

WHEREAS, accordingly, the Appellant contends that it was improper to exclude the fourth floor elevator shafts and stairwells from the zoning floor area, and the Building Permit must be revoked because there is not sufficient available bulk to accommodate the inclusion of the elevator shafts and stairwells in the floor area, which will increase the actual net zoning floor area by between 1,200 sq. ft. and 1,500 sq. ft.; and

WHEREAS, in response, DOB acknowledges that the ZR § 12-10 definition of floor area specifically includes "elevator shafts or stairwells at each floor," however, it notes that the entire fourth floor of the Building is a mechanical floor devoted to mechanical equipment; and

WHEREAS, DOB notes that the ZR § 12-10 definition of floor area also specifically excludes "floor space used for mechanical equipment," and that because the entire fourth floor is allocated to mechanical use and is thus wholly excluded, the elevator shafts and stairwells which pass through the mechanical floor are excluded from floor area calculations; and

WHEREAS, DOB asserts that the ZR is silent as to whether elevator shafts and stairwells should be included in floor area calculations when the remainder of the floor is occupied by mechanical equipment and thus exempt from floor area calculations; and

WHEREAS, DOB concludes that an interpretation whereby such spaces are the only floor area on a floor would be unreasonable; and

WHEREAS, further, in support of its authority to interpret the ZR, DOB cites to Appelbaum v. Deutsch, 66 N.Y.2d 975, 977 (1985), wherein the Court of Appeals noted that "BSA and DOB are responsible for administering and enforcing the zoning resolution, and their interpretation must therefore be given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute" (internal citations and quotation marks omitted); and

WHEREAS, DOB states that its duty as the agency that administers and enforces the ZR (see New York City Charter § 643; ZR § 71-00) requires that it interpret the Zoning Resolution in a logically consistent manner; and

WHEREAS, DOB argues that the result of applying the Appellant's interpretation to the Building leads to a result contrary to the spirit of the ZR; and

WHEREAS, DOB cites to McKinney's Consolidated Laws of New York, Book 1, Statutes § 113, "[g]eneral words in a statute may receive limited construction in order to avoid absurd, unjust, or other objectionable results;" and

WHEREAS, DOB states that its interpretation that elevator shafts and stairwells are excluded from floor area on an entirely mechanical floor is necessary in order to avoid the absurd result of counting these voids as floor area when they

have no floor space and where the adjoining floor is not counted as floor area; and

WHEREAS, the Owner claims that DOB's interpretation of the relevant provisions of the ZR to permit elevator shafts and stairwells to be excluded from zoning floor area on floors occupied solely by mechanical equipment is the only rational way to reconcile the several different characteristics of zoning floor area; and

WHEREAS, specifically, the Owner contends that the determination of whether or not elevator shafts and stairwells on an otherwise mechanical floor should be treated as floor area involves the interaction of three different elements of the definition of zoning floor area, pursuant to ZR § 12-10: (i) that "'floor area' is the sum of the gross areas of the several *floors* of a building [emphasis added];" (ii) that "elevator shafts and stairwells at each floor" are to be included as floor area; and (iii) that "floor space used for mechanical equipment" is to be excluded from zoning floor area; and

WHEREAS, the Owner argues that the ZR requires elevator shafts and stairwells to be included in zoning floor area because these areas are not "floors;" rather, they are voids that do not fall strictly into the definition of floor area, and therefore the ZR must specify that these spaces are treated as floor area so that they can take on the character of the remainder of the floor on which they are located; and

WHEREAS, the Owner further argues that these areas are better characterized as voids rather than floor space because they are circulation elements appurtenant to the floor through which they pass or which they serve, and therefore should be treated for floor area purposes in the same manner as the floor to which they relate is treated; and

WHEREAS, the Owner concurs with DOB's interpretation for the following reasons: (i) vertical circulation spaces do not have a character of their own but are accessory to and take their character from, the individual floors through which they pass; (ii) excluding elevator shafts and stairwells on mechanical floors is entirely consistent with the purposes of the ZR's floor area controls because these spaces make no greater contribution to a building's density and have no greater impact on its neighbors than does the actual floor space on the mechanical equipment floor; and (iii) it is absurd to exclude from zoning floor area all of the floor space on an exclusively mechanical floor while including all of the voids; and

WHEREAS, the Owner states that the elevator shafts and stairwells merely pass through the subject mechanical floor, which is only accessible via the service elevator and as a fire exit stair, and that if the elevators and stairwells did not have to pass through the subject mechanical floor to connect the floors above and below, the entire floor could be occupied by mechanical space – and therefore be exempted from floor area – even though the bulk of the building, which is what the ZR's floor area regulations seek to control, would be the same; and

WHEREAS, the Board agrees that DOB has the authority to administer and enforce the ZR and that it is within its authority to interpret how the language including elevator shafts and stairwells as floor area applies to floors that are otherwise completely exempt from floor area; and

WHEREAS, further, the Board agrees with DOB and the Owner that it is unreasonable to exclude from zoning floor area all of the floor space on an exclusively mechanical floor while including all of the voids; and

2. The Extent of DOB's Interpretive Authority

WHEREAS, the Appellant asserts that DOB's interpretation has the effect of rewriting the law in violation of the doctrine of legislative equivalency, which provides that "existing legislation may only be amended or repealed by the same means as was used to enact it." Noghrey v. Town of Brookhaven, 214 A.D. 2d 659 (N.Y.A.D. 2d Dept., 1995), citing Matter of Gallagher v. Regan, 42 N.Y.2d 230, 234 (N.Y. 1977); and

WHEREAS, the Appellant argues that DOB has no authority to narrow a definition in the ZR in the face of clear and unambiguous language; and

WHEREAS, in response, DOB asserts that, although the ZR states that elevator shafts and stairwells are treated as floor area, a rational interpretation of the statute requires DOB to apply a more narrow interpretation which recognizes that those spaces do not count as floor area when the entire floor through which they pass is excluded as mechanical space; and

WHEREAS, DOB argues that New York State courts' and the Board's precedent support its authority to narrow the definition of otherwise clear language to further the purpose of the ZR and prevent an inconsistent result; and

WHEREAS, DOB cites to People v. Ryan, 274 N.Y. 149 (N.Y. 1937) for the principle that narrowing the application of a statutory term is permitted to avoid a result contrary to legislative intent; and

WHEREAS, DOB also cites to BSA Cal. No. 307-06-A (86-18 58th Avenue, Queens), wherein the Board denied a property owner's appeal seeking to have its use classified as a Use Group 3 philanthropic or non-profit institution with sleeping accommodations pursuant to ZR § 22-13; although the applicant was a registered non-profit corporation whose proposed premises contained sleeping accommodations, the Board upheld DOB's interpretation narrowing the application of ZR § 22-13 to apply only to institutions for which the provision of sleeping accommodations was necessary to a philanthropic purpose that was not itself the provision of sleeping accommodations; and

WHEREAS, the Board agrees that BSA Cal. No. 307-06-A is analogous to the subject case in that both involve a DOB interpretation which narrows the application of the ZR's general language in order to achieve results consistent with the purposes of the ZR; and

WHEREAS, the Appellant argues that the subject case is analogous to BSA Cal. No. 67-07-A (515 East 5th Street, Manhattan), wherein the Board rejected DOB's attempts to "create ambiguity in the Zoning Resolution where none exists;" and

WHEREAS, the Board notes that BSA Cal. No. 67-07-A involved a challenge to DOB's issuance of a permit for an enlargement of a building that would exceed 60'-0" in height, despite the language in ZR § 23-692 prohibiting the building from exceeding a height equal to the width of the abutting street, which was 60'-0"; DOB argued that that the term "height" was ambiguous because it was not defined in the ZR,

and that DOB was therefore authorized to define height by turning to the "Penthouse Rule," codified in Building Code § 27-306(c), under which the proposed penthouse was not included in the calculation of height; and

WHEREAS, in granting the appeal, the Board found that merely because "height" is not defined in the ZR does not mean that the word is ambiguous, that the Building Code cannot override the ZR and the limitations it establishes on the heights of buildings, and that DOB's application of the Penthouse Rule in the absence of action by the Board or City Planning was equivalent to a legislative act, which exceeded its authority; and

WHEREAS, the Board finds the facts underlying BSA Cal. No. 67-07-A to be distinguishable from the case at hand for a number of reasons; and

WHEREAS, the Board finds that, unlike in BSA Cal. No. 67-07-A, DOB's interpretation in the subject case does not rely on the application of the Building Code or any other extrinsic statutory source, but rather is based on a more inclusive reading of the ZR § 12-10 definition of floor area; and

WHEREAS, the Board notes that in Lee v. Chin, 781 N.Y.S.2d 625 (N.Y. Sup. Ct. 2003) the court stated that it is a "well-established rule in statutory construction that a statute be viewed as a whole, and all of its parts, if possible, be harmonized to achieve the legislative purpose;" and

WHEREAS, the Board finds that, as opposed to being equivalent to a legislative act, DOB's current interpretation merely limits the construction of the general words that floor area includes "elevator shafts or stairwells at each floor," in order to harmonize the components of the ZR to achieve the legislative purpose and avoid an absurd result; and

WHEREAS, as to the Appellant's contention that the relevant text is entirely free from ambiguity, the Board finds that the fact that the ZR § 12-10 definition of "floor area" includes elevators and stairwells in the floor area calculations, yet specifically excludes floor space devoted to mechanical equipment from the floor area calculations, creates a degree of ambiguity as to whether or not elevator shafts and stairwells are to be treated as floor area when they are located on a floor that consists entirely of mechanical space; and

WHEREAS, the Board notes that while the two provisions may not be ambiguous when read independently, an ambiguity arises in applying the provisions to a situation in which they are both applicable, as is the case with elevator shafts and stairwells on an entirely mechanical floor; and

WHEREAS, the Appellant also asserts that DOB's authority to narrow a definition contained in the ZR was rejected by the Court of Appeals in Raritan; and

WHEREAS, in Raritan, the Court rejected DOB's practice of counting cellar space as floor area when it was being used for residential purposes despite the fact that the ZR exempted cellar space from floor area; and

WHEREAS, the Appellant asserts that Raritan is analogous to the subject case because the language in the ZR regarding the inclusion of elevator shafts and stairwells in floor area calculations is clear and unambiguous, similar to the cellar language in Raritan; and

WHEREAS, the Board finds that the Appellant's reliance on Raritan is not supported by the underlying facts of the case; and

WHEREAS, the Board notes that Raritan involved a development consisting of two-family homes with residential use within the cellar space, where the developer excluded the cellar space from floor area calculations based on the "cellar space" exemption of the ZR § 12-10 definition of floor area, however, DOB revoked the building permit based on its determination that the cellar space should be included in the floor area calculations since it was being used for residential purposes and space dedicated to residential use was included in floor area calculations wherever it was located within a building; the developer appealed DOB's decision to the Board, and the Board upheld DOB's decision; and

WHEREAS, the Court of Appeals overturned the Board's denial of the developer's appeal in Raritan, holding that the statutory language was clear in that "cellar space," without qualification, is expressly excluded from floor area calculations, and therefore floor area calculations "should not include cellars regardless of the intended use of the space" Raritan, 91 N.Y.2d 98, at 103; and

WHEREAS, contrary to the Appellant's argument, the Board finds the analysis in Raritan – that if an entire floor is excluded from floor area calculations even space dedicated to other uses otherwise not exempted should also be excluded – more analogous to the subject case in terms of the ZR's express exclusion of "floor space used for mechanical equipment," in that if the floor space of a floor is devoted entirely to mechanical equipment the entire floor should be exempt, regardless of whether the floor includes elevator shafts and stairs which count towards floor area on other floors; and

WHEREAS, the Board notes that since the Court's decision in Raritan, the ZR has been amended to specify that, "cellar space" is exempt from floor area calculations, "except where such space is used for dwelling purposes;" and

WHEREAS, the Board finds an additional parallel between the exemption for "cellar space" and the current situation, in that DOB does not count elevator shafts or stairwells in the floor area calculations for "cellar space" since the entire floor is exempt under ZR § 12-10 (unless it is used for dwelling purposes); therefore, the Board finds DOB's practice of exempting elevator shafts and stairwells for floors occupied entirely of mechanical space consistent with its approach to "cellar space," in that the entire mechanical floor is exempt; and

WHEREAS, the Board agrees with DOB and the Owner that, when read in the context of the ZR § 12-10 definition of floor area as a whole, a rational interpretation of the statute requires DOB to apply a more narrow definition of floor area which recognizes that elevator shafts and stairwells do not count as floor area when the entire floor is excluded as mechanical space; and

3. DOB's Past Practice

WHEREAS, the Appellant asserts that DOB practice, however longstanding, does not inherently legitimize an interpretation that is inconsistent with the plain meaning of a statute; and

WHEREAS, the Appellant again points to BSA Cal. No. 67-07-A, wherein the Board rejected the argument that a longstanding DOB practice in and of itself signifies that an interpretation is correct; and

WHEREAS, the Appellant further argues that even if a longstanding and consistent DOB practice does exist on this matter, no written memoranda or technical policy and procedure notices have been published by DOB to provide guidance as to this aspect of its interpretation of the definition of floor area; and

WHEREAS, DOB and the Owner argue that DOB's interpretation should be upheld because it is consistent with the agency's longstanding practice and policy to exclude elevator shafts and stairwells from the zoning floor area when the remainder of the entire floor is excluded from the definition of floor area as mechanical equipment; and

WHEREAS, as evidence of its policy to exclude elevator shafts and stairwells located on wholly mechanical floors from the floor area calculation, DOB provided a list of other cases in which it has applied this interpretation, and submitted examples of reconsiderations which were granted specifically on this issue; and

WHEREAS, in further support of DOB's consistent practice in this regard, the Owner submitted a list prepared by its zoning consultant which showed 16 additional buildings, dating back approximately 40 years, that have mechanical floors in the middle of the building and for which DOB determined that elevator shafts and stairwells were excluded from the zoning floor area where they passed through the mechanical floor; and

WHEREAS, the Owner also argues that the concept of an entire floor being devoted to mechanical space was not contemplated when the ZR was drafted in 1961 and therefore DOB's interpretation is necessary to account for relevant advances in technology and approaches to building design that allow for a wholly mechanical floor; and

WHEREAS, the Owner notes that DOB is often required to interpret provisions of the ZR that appear to be clear and unambiguous in order to achieve fairness, accommodate new approaches to building design or engineering, or recognize new technologies; and

WHEREAS, the Owner provided a number of examples of situations in which DOB made such interpretations of seemingly unambiguous text in order to accommodate modern building designs or advances in technology; and

WHEREAS, the Board finds the evidence of DOB's longstanding and consistent practice to be a relevant consideration regarding the propriety of DOB's interpretation of the ZR, but agrees with the Appellant that evidence of such practice, particularly in the absence of any written memoranda or technical policy and procedure notices, does not, in and of itself, signify that an interpretation is correct; and

WHEREAS, conversely, the Board notes that the fact that DOB has not memorialized this longstanding policy is not a compelling reason to nullify DOB's rational interpretation to exclude elevator shafts and stairwells from floor area calculations on a wholly mechanical floor; and

WHEREAS, the Board agrees with the Owner that DOB's past practice of interpreting provisions of the ZR that appear to be unambiguous in order to accommodate new approaches to building design or advances in technology supports DOB's interpretation in the subject case, as wholly mechanical floors may not have been contemplated when the ZR was drafted in 1961; and

WHEREAS, accordingly, for the reasons stated above, the Board concludes that the elevator shafts and stairwells on the fourth floor of the Building – which is otherwise an entirely mechanical floor – were properly excluded from the floor area calculations; and

B. Floor Area Deductions Related to the Loading Berths

WHEREAS, initially, the Appellant made the argument that the Owner took excessive floor area deductions on the ground floor for the loading berths; and

WHEREAS, specifically, the Appellant asserted that ancillary space, including an office, was improperly included in the areas for which the Owner took deductions for the loading berths; and

WHEREAS, the Board notes that at the time of filing of this appeal, two loading berths were required as per the underlying zoning regulations; and

WHEREAS, pursuant to the ZR § 12-10 definition of floor area, floor area does not include "floor space used for *accessory* off-street loading berths, up to 200 percent of the amount required by the applicable district regulation;" and

WHEREAS, however, the Appellant contends that the Owner took deductions for the loading berths that were approximately 671 sq. ft. in excess of the allowable 200 percent of the area of the loading berths; and

WHEREAS, on November 13, 2009, DOB sent the Owner a letter requesting that it clarify how specified areas in the Building function as part of the loading berth, so as to confirm whether the areas are properly deducted from floor area computations; and

WHEREAS, during the course of the hearing process, the Owner filed an application with the Board under BSA Cal. No. 281-09-BZ, for a special permit to allow a physical culture establishment ("PCE") on the fifth and sixth floors of the subject Building; and

WHEREAS, in response to requests to clarify the loading berth computations, the Owner stated that the proposed plans would be amended based on the disposition of BSA Cal. No. 281-09-BZ, as the loading berth configuration would be revised upon approval of the PCE application; and

WHEREAS, on February 23, 2010, the Board approved the PCE application; and

WHEREAS, subsequently, the Owner submitted the Revised Plans, which reduce the number of required loading berths from two loading berths to a single loading berth, and as a result the floor area deductions were correspondingly reduced; and

WHEREAS, DOB submitted a letter dated July 6, 2010, stating that the Revised Plans address the disputed loading berth deductions and were approved by DOB on June 24, 2010; and

WHEREAS, the Board notes that loading berth is not a

defined term in the ZR and that the ZR § 12-10 definition of floor area, by permitting 200 percent of the amount of floor space required for an accessory loading berth to be deducted from floor area calculations, recognizes that what constitutes a loading berth for the purposes of calculating floor area inherently goes beyond the floor space devoted to the loading berth itself, and may include some ancillary spaces as well; and

WHEREAS, following the submission of the Revised Plans, the Appellant did not pursue its argument that ancillary space was improperly included in floor area deductions for the single loading berth; and

WHEREAS, the Board notes that loading berth deductions in the Revised Plans have been reduced to 200 percent of the floor space required for the single loading berth; and

WHEREAS, accordingly, the Board finds that the deductions related to the loading berth on the Revised Plans are proper; and

C. Classification of Swimming Pool Service Process Equipment Spaces and Electric Meter Rooms as Mechanical Equipment

WHEREAS, the Appellant asserts that the floor area deductions taken for swimming pool service process equipment spaces and electric meter rooms are improper because neither of these facilities constitutes "mechanical equipment" as set forth in the allowable deductions for floor area under ZR § 12-10; and

WHEREAS, the Appellant further asserts that since such deductions are not specifically excluded in the ZR, they should be included in the attributable zoning floor area, and there is not sufficient available zoning bulk to accommodate this increase; and

WHEREAS, in response, DOB states that the swimming pool service process equipment spaces and electric meter rooms are properly excluded from floor area calculations as mechanical equipment deductions because these spaces service the swimming pool, which in turn serves the entire building; and

WHEREAS, the Owner similarly states that these spaces are necessary to operate the swimming pool, which will be available to all guests in the hotel, and therefore falls within the ZR § 12-10 exclusion from zoning floor area for "space used for mechanical equipment;" and

WHEREAS, the Board notes that following its initial submission, the Appellant did not pursue the arguments related to the swimming pool service process equipment spaces and electric meter rooms, and failed to provide additional evidence to support them; and

WHEREAS, the Board notes that the ZR does not differentiate swimming pool service process equipment and electric meter rooms from other mechanical equipment; and

WHEREAS, the Board further notes that the Appellant has offered no specific reason for why the swimming pool service process equipment spaces and electric meter rooms do not qualify as mechanical equipment; and

WHEREAS, accordingly, the Board agrees with DOB and the Owner that these spaces are properly excluded from the floor area calculations as "space used for mechanical equipment," pursuant to ZR § 12-10; and

D. Calculations Related to the Zoning Lot

WHEREAS, the Appellant initially made several additional arguments in support of its position that the Building Permit should be revoked, based on issues related to the zoning lot as a whole and the effect of the adjacent building at 145 Sixth Avenue on the Building; and

WHEREAS, the Board notes that the zoning lot on which the Building is being developed includes Lots 1101 through 1131, the lots located within an eight-story (including penthouse) condominium building at 145 Sixth Avenue; and

WHEREAS, the Owner states that the zoning lot was created pursuant to a Declaration of Zoning Lot Restrictions, dated February 3, 2006, which merged the 246 Spring Street lot with the adjacent property at 145 Sixth Avenue; and

WHEREAS, the Appellant asserts that the mean curb level elevations have been calculated only for the portion of the zoning lot on which the Building is to be developed, and that the definition of curb level in ZR § 12-10 requires that the curb level elevations be calculated for the entire zoning lot; and

WHEREAS, in response, DOB states that since the ZR requires the curb level to be independently calculated for each portion of the zoning lot, adequate calculations have been provided for the subject site, which is a large corner lot with a portion of the lot subject to through lot regulations; and

WHEREAS, DOB further states that corner and through lot requirements have been satisfied and there is no requirement in the ZR to factor in curb level elevations from the other corner lot portion on which 145 Sixth Avenue is located; and

WHEREAS, the Board agrees with DOB that adequate curb level calculations have been provided for the subject site; and

WHEREAS, the Appellant also argues that there are inconsistencies between the zoning lot areas indicated in the plans for the Building and the plans for 145 Sixth Avenue, and that no survey was provided to establish which zoning lot area is correct; and

WHEREAS, in response, DOB notes that a survey was provided in the approved plans for the Building, which were submitted to the Board, reflecting that the zoning lot area is 34,102 sq. ft.; and

WHEREAS, DOB states that the Appellant has cited no authority to dispute the survey submitted with the approved plans for the Building; and

WHEREAS, the Board agrees with DOB that it was proper to rely on the zoning lot area indicated on the survey submitted with the approved plans for the Building; and

WHEREAS, finally, the Appellant asserts that without the plans showing the floor area for each floor at 145 Sixth Avenue, it is not possible to confirm the accuracy of the attributable floor areas in determining FAR compliance; and

WHEREAS, in response, DOB states that while there is not a diagram showing the floor area for each floor of 145 Sixth Avenue, the plans include a drawing with a table of the relevant floor areas, which shows compliance, and DOB customarily accepts such tables as evidence of the FAR

compliance; and

WHEREAS, DOB further states that 145 Sixth Avenue has full lot coverage without any floor area deductions for the first four floors, so it is not possible for these floors to take up any more floor area; and

WHEREAS, the Board finds that DOB's acceptance of the floor area table provided in the drawings for 145 Sixth Avenue was appropriate, particularly in light of the physical constraints of the lot; and

WHEREAS, the Board notes that following its initial submission, the Appellant provided no additional arguments or support for its assertions related to the curb levels, the lack of a survey, or the lack of plans demonstrating the floor area for each floor of 145 Sixth Avenue; and

WHEREAS, accordingly, the Board finds that the Appellant has provided no compelling argument as to why the Building Permit should be revoked on these bases; and

E. Issues Related to the Permit for 145 Sixth Avenue

WHEREAS, the Appellant initially included arguments related to the compliance of 145 Sixth Avenue with the relevant zoning regulations; and

WHEREAS, the Board notes that following its initial submission, the Appellant did not pursue the arguments related to 145 Sixth Avenue, and failed to provide additional evidence to support them; and

WHEREAS, DOB argues that the Appellant's allegations about the 145 Sixth Avenue site are not properly joined in these proceedings, and are not appropriate claims for an appeal in connection with the subject application; and

WHEREAS, specifically, DOB states that despite the fact that the Appellant's claim that the 145 Sixth Avenue site does not comply with the approved plans is irrelevant to the propriety of the Building Permit, and therefore is irrelevant to the subject appeal, DOB nonetheless inspected the construction at 145 Sixth Avenue and found that it was in compliance with the approved plans; and

WHEREAS, pursuant to New York City Charter § 666(6) and the Board's Rules of Practice and Procedure § 1-01(6), a final determination in the form of an "order, requirement, decision or determination" from DOB is required in order for the Board to hear and decide an appeal of a DOB action related to a site; and

WHEREAS, the Board notes that a final determination has not been issued by DOB related to the arguments raised by the Appellant concerning 145 Sixth Avenue; and

WHEREAS, specifically, the Board notes that the Appellant's letter dated September 15, 2008, upon which the Final Determination is based, only raised issues concerning the allegedly excessive floor area deductions taken by the Owner, which are addressed *supra*, and did not refer to any of the issues concerning 145 Sixth Avenue; and

WHEREAS, the Board further notes that the building at 145 Sixth Avenue is owned separately from the subject building, at 246 Spring Street, and that work on the buildings is being performed pursuant to separate building permits; therefore the resolution of the issues raised by the Appellant as to 145 Sixth Avenue involves different parties than, and is not directly related to, the subject appeal; and

WHEREAS, accordingly, the Board finds that the compliance of the building at 145 Sixth Avenue, and any issues related thereto, are not included in the subject appeal; and

F. Issues related to the Revised Plans

WHEREAS, during the course of the hearing, in response to the Revised Plans which reflected a reduced loading berth requirement, the Appellant made the following additional arguments: (i) the Revised Plans improperly took deductions on the first through sixth floors of the Building; and (ii) in order to reduce the loading berth requirement the Owner improperly listed accessory uses within the hotel as separate uses; and

WHEREAS, notwithstanding the absence of a final determination on the additional deductions and the accessory use question, DOB and the Owner provided responses refuting the Appellant's claims; and

WHEREAS, as to the additional floor area deductions, the Appellant now contends that deductions were improperly taken on the first through sixth floors in order to compensate for the approximately 700 sq. ft. increase in floor area on the ground floor attributed to the space formerly occupied by the second loading berth, which had been excluded from the floor area calculations; and

WHEREAS, in response, DOB states that it accepted additional floor area deductions for mechanical space found to be necessary in the Revised Plans; and

WHEREAS, specifically, the Owner submitted a letter from the project architect which states that the additional floor area deductions in the Revised Plans reflect (i) the incorporation of the new spa facility (the Board-granted PCE), (ii) the incorporation of the final kitchen plans and restaurant drawings, and (iii) revisions to the mechanical and plumbing chases that pass through the lower floors of the Building to service the spa facility and kitchen spaces; and

WHEREAS, DOB states that it reviewed the additional floor area deductions reflected in the Revised Plans and determined that they are for mechanical space and, thus, are appropriate; and

WHEREAS, as to the accessory use issue, the Appellant argues that, in order to reduce the required number of loading berths for the Building from two to one, the Owner improperly listed the spa, restaurant and catering facility as separate rather than accessory uses from the hotel use; and

WHEREAS, the Appellant contends that the spa, restaurant, and catering facility are properly classified as accessory uses to the hotel, such that the floor area of these uses is counted toward the overall hotel floor area, which would put the hotel floor area over the 300,000 sq. ft. threshold and require a second loading berth; and

WHEREAS, the Owner states that the spa is designed to be open to the public, and submitted the public relations plan for the spa which illustrates that while it will serve hotel guests, the spa is marketed towards people who are not staying at and have no association to the hotel; and notes that it obtained a special permit from the Board pursuant to ZR § 73-36 for a PCE specifically so that it could operate the spa as a public facility; and

WHEREAS, the Owner states that the restaurant can be

entered directly from the street, and that it is intended to operate independently from the hotel and attract a clientele outside of hotel guests; and

WHEREAS, the Owner states that the third floor function space is correctly identified as a catering space and not accessory to the hotel; and

WHEREAS, finally, the Owner states that these uses are operated in individual condominium spaces that, although the Owner is holding for now, could be sold and owned by different entities; and

WHEREAS, DOB states that the spa, restaurant, and catering facility uses, which were previously listed as being part of the hotel, will be open to the public and therefore will not be accessory to the hotel use; and

WHEREAS, DOB further states that if it finds in the future that the spaces are, in fact, closed to the public, it is an enforcement issue that DOB will address at that time; and

WHEREAS, as noted above, the Board declines to make a determination as to the propriety of the deductions taken on the first through sixth floors of the Building or whether or not the spa, restaurant, and catering facility are accessory uses, but notes that DOB has accepted the additional deductions as mechanical and has accepted the spa, restaurant and catering facility as non-accessory uses for the reasons stated above; and

CONCLUSION

WHEREAS, for the reasons stated above, the Board rejects the Appellant's arguments that: (i) the elevator shafts and stairwells at the fourth floor were improperly deducted from the floor area calculations; (ii) excessive deductions were taken for the loading berths; (iii) the swimming pool service process equipment and electric meter rooms were improperly deducted as mechanical equipment; (iv) the curb levels were improperly calculated; (v) the zoning lot area for the site was not established; and (vi) compliance with FAR cannot be established without plans for the proposed construction at 145 Sixth Avenue; and

WHEREAS, accordingly, the Board agrees with DOB and the Owner that there is no basis for the revocation of the Building Permit.

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated November 24, 2008, is hereby denied.

Adopted by the Board of Standards and Appeals, October 5, 2010.

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 A. 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, this is an appeal requesting a Board determination that the owner of the site has obtained the right to complete construction of a three-story and solarium building 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 continued hearings on June 8, 2010, and then to decision on October 5, 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 disapproval of this application; 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 permit is invalid; (2) work on the site was performed illegally; (3) substantial expenditures should have been calculated in light of the six-story building approved at the time of the zoning change; (4) the owner did not act in good faith; and (5) there is insufficient evidence that the owner will incur a serious loss if vesting were not permitted; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application; and

WHEREAS, the applicant proposes to develop the subject site with a three-story residential building and solarium; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, however, on February 15, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site to R4-1; and

WHEREAS, the applicant represents that the development complies with the former R6 district parameters; and

WHEREAS, because the site is now within an R4-1 district, the development does not comply with requirements for floor area ratio, height, and front yard depth; 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 December 13, 2005, the Department of Buildings ("DOB") issued Alteration Permit No. 302049441-01-AL (the "Alteration Permit"), permitting construction of a five-story and cellar residential building at the site; and

WHEREAS, the applicant states that on February 7, 2006, DOB issued a post approval amendment ("PAA")

permitting the addition of a sixth floor to the proposed residential building at the site; the six-story building complied with the R6 zoning district in effect at the time the PAA was issued; and

WHEREAS, the applicant now proposes to construct a three-story residential building and solarium, which utilizes all of the work completed at the site prior to the Rezoning Date; and

WHEREAS, the applicant notes that, as compared to the six-story building, the proposed three-story building represents a reduction in floor area from 7,515 sq. ft. (3.0 FAR) to 4,038 sq. ft. (1.61 FAR), a reduction in wall height from 62'-1" to 42'-10 ½", and a reduction in total height from 62'-1" to 53'-10 ¾"; and

WHEREAS, therefore, the proposed three-story building reduces the degree of non-compliance with the current R4-1 zoning district, with respect to the floor area and height of the building; and

WHEREAS, the Opposition argues that the Alteration Permit was invalid at the time it was issued because the approved plans did not comply with the requirements of law in effect when the property was zoned as R6, and because the subject construction necessitated a New Building Permit rather than an Alteration Permit; and

WHEREAS, in response, the applicant notes that DOB issued letters dated April 20, 2010 and May 6, 2010 stating that the Alteration Permit was lawfully issued prior to the Rezoning Date; and

WHEREAS, the Board notes that on September 17, 2010, DOB submitted a letter stating that it was auditing the construction documents in response to a complaint by the Opposition; and

WHEREAS, by letter dated October 1, 2010, DOB confirms that the Alteration Permit was lawfully issued; and

WHEREAS, the Opposition also contends that the Alteration Permit is invalid because construction was performed illegally at the site; and

WHEREAS, specifically, the Opposition states that on December 8, 2008 DOB issued a full Stop Work Order ("SWO") because over 50 percent of the foundation, floor joists, and walls of the old structure had been removed; and

WHEREAS, the Opposition argues that the issuance of the SWO confirms that the permit was invalid and that the work performed should have been done pursuant to a New Building Permit, notwithstanding the fact that the SWO was later rescinded; and

WHEREAS, the applicant submitted a copy of the letter of rescission of the SWO, dated April 3, 2009, and represents that the SWO was rescinded because it was determined to be factually incorrect; and

WHEREAS, the Board has reviewed the record and acknowledges that based on DOB's determination, the Alteration Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves a major enlargement, as a "minor development"; and

WHEREAS, for a "minor development," ZR § 11-331 permits an extension of time to complete construction and obtain a certificate of occupancy upon a finding that all work on foundations 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, 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 construction was not completed 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 Alteration Permit pursuant to ZR § 11-332 before the deadline of February 15, 2008 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 knew or should have known that the Alteration Permit was not lawfully issued due to the discrepancies, inconsistencies and illegalities in the DOB plans; and

WHEREAS, as noted above, by letters dated April 20, 2010, May 6, 2010 and October 1, 2010 DOB has confirmed that the Alteration Permit was lawfully issued; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed foundation work 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 February 15, 2008, the applicant completed excavation, footings, and the entire foundation of the building, including foundation bracing and strapping and underpinning of the existing foundation; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site; construction contracts, a construction schedule, copies of cancelled checks, and invoices; and

WHEREAS, the Board notes that it has not considered any work performed subsequent to February 15, 2008 and the applicant represents that its analysis is based on work performed up to that date; 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 $158,390.56 or 14 percent, including hard and soft costs and irrevocable commitments, out of $1,168,251.50 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, the Opposition argues that the Board should consider the expenditures as a percentage of the total construction costs for the six-story building rather than the proposed three-story building, because the plans approved at the time of the Rezoning Date were for the six-story building; and

WHEREAS, the Board notes that the fact that DOB vested the project under ZR § 11-331 based on plans approved for the six-story building does not preclude the applicant from changing the scope of the project to the proposed three-story building; and

WHEREAS, as noted above, the proposed three-story building decreases the degree of non-compliance with the current R4-1 zoning district as to floor area and height; and

WHEREAS, the applicant represents that the proposed three-story building utilizes all of the work completed prior to February 15, 2008; and

WHEREAS, accordingly, the Board is not persuaded by the Opposition's argument that the expenditures should be considered in light of the six-story building, given that the applicant is permitted to change the scope of the project to the proposed three-story building; and

WHEREAS, the Opposition also contends that there are inconsistencies with respect to the total construction costs represented by the applicant; and

WHEREAS, specifically, the Opposition states that the construction cost of the original five-story proposal listed on the Alteration Permit was $200,000, but that the construction contract submitted in connection with the six-story building approved under the PAA estimated a construction cost in excess of $1,740,000, and that the estimated construction cost for the proposed three-story building is $1,168,251.50; and

WHEREAS, in response, the applicant represents that the estimated cost of the six-story building and the proposed three-story building are accurate, and states that at the time the initial application was filed at DOB the cost of construction was underestimated, and the costs would have been adjusted upon completion of the job by filing a PW3 form indicating the actual construction costs; 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 inability to develop approximately 1,780 sq. ft., or approximately 44 percent, of the proposed residential floor area of the three-story building; and

WHEREAS, the Opposition argues that the applicant has failed to provide evidence to support the purported loss that it will incur if vesting were not permitted, and has not explained what portion of the approved three-story building will have to be reduced or redesigned to create a conforming building, and

WHEREAS, in response, the applicant states that if required to construct pursuant to the current R4-1 district regulations, it would limit the size of the building to a complying floor area of 1,882 sq. ft., with a potential 376 sq. ft. increase under the attic rule, which would be a significant reduction from the originally approved floor area of 7,515 sq. ft. and the currently proposed floor area of 4,038 sq. ft.; and

WHEREAS, the applicant further states that a complying home would require the street wall to be reduced from the proposed 42'-10 ½" to 25'-0", and the maximum

building height would be have to be reduced from 53'-10 ¾" to 35'-0"; and

WHEREAS, the applicant further states that the inability to construct under the prior zoning regulations would require the owner to re-design the home; 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, 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 No. 302049441-01-AL, 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, October 5, 2010.

110-10-BZY
APPLICANT – Cozen O'Connor, for Landmark Developers of Rockaway, owners.
SUBJECT – Application June 18, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning. R5A zoning district
PREMISES AFFECTED – 93-06 Shore Front Parkway, north side of Shore Front Parkway from B.94th to B.93rd Street, Block 16130, Lot 11, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Peter Geis.
For Opposition: Joelie Ballonzoli, Karen Traynor and Vivian Carter.
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 October 19, 2010, at 10 A.M., for decision, hearing closed.

113-10-BZY
APPLICANT – Rothkrug Rothkrug Weinberg & Spector, for Plaza Group 36 LLC, owner.
SUBJECT – Application June 22, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning. R5B zoning district.
PREMISES AFFECTED – 30-86 36th Street, west side of 36th Street, 152' north of 31st Avenue, Block 650, Lot 80, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Todd Dale and Adam Rothkrug.
For Opposition: Donnelly Marks and Maureen Neary.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 10 A.M., for continued hearing.

125-10-A
APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.
SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.
PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #10BK
APPEARANCES –
For Applicant: Chris Wright.
For Opposition: John E-Bene.

ACTION OF THE BOARD – Laid over to November 16, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 5, 2010
1:30 P.M.

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

ZONING CALENDAR

100-10-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Gittie Wertenteil and Ephrem Wertenteil, owners.
SUBJECT – Application June 2, 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), side yard (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2512 Avenue R, south side of Avenue R between Bedford Avenue and East 26th Street, Block 6831, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #15BK
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 Brooklyn Borough Commissioner, dated May 3, 2010, acting on Department of Buildings Application No. 320134653, reads:

> "Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio.
> Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required opens space.
> Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage.
> Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed straight line extension of the side yard provides less than the minimum required side yard.
> Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than that of the minimum required rear yard;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 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, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in *The City Record*, and then to decision on October 5, 2010; and

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

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

WHEREAS, the subject site is located on the south side of Avenue R, between Bedford Avenue and East 26th Street, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,250 sq. ft., and is occupied by a single-family home with a floor area of 1,896 sq. ft. (0.58 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 1,896 sq. ft. (0.58 FAR) to 2,665 sq. ft. (0.82 FAR); the maximum permitted floor area is 1,625 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of approximately 53 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 47 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 2'-11" along the eastern 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 R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 2, 2010"-(8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,665 sq. ft. (0.82 FAR); an open space of approximately 53 percent; a lot coverage of approximately 47 percent; a side yard with a minimum width of 6'-6" along the western lot line; a side yard with a minimum width of 2'-11" along the eastern 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, October 5, 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 Bob Pauls.
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 November 9, 2010, at 1:30 P.M., for decision, hearing closed.

277-07-BZ
APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.
SUBJECT – Application December 3, 2007 – Variance (§72-21) proposed to erect a one story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district
PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Hiram Rothkrug.

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

98-08-BZ
APPLICANT – Gerald J. Caliendo, RA, for Property Holdings LLC/Moshik Regev, owner.
SUBJECT – Application April 18, 2008 – Variance (§72-21) to allow a four-story residential building containing four (4) dwelling units, contrary to use regulations (§42-00). M1-1 district.
PREMISES AFFECTED – 583 Franklin Avenue, 160' of the corner of Atlantic Avenue and Franklin Avenue, Block 1199, Lot 3, Borough of Brooklyn.
COMMUNITY BOARD #8BK
APPEARANCES –
For Applicant: Sandy Anagnostou.

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

31-09-BZ
APPLICANT – Eric Palatnik, PC, for R & R Auto Repair & Collision, owner.
SUBJECT – Application February 27, 2009 – Special Permit (§11-411, §11-412, §11-413) for re-instatement of previous variance, which expired on November 12, 1990; amendment for a change of use from a gasoline service station (UG16b) to automotive repair establishment and automotive sales (UG16b); enlargement of existing one story structure; and Waiver of the Rules. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 117-04 Sutphin Boulevard, southwest corner of Foch Boulevard, Block 1203, Lot 13, Borough of Queens.
COMMUNITY BOARD #12Q
APPEARANCES –
For Applicant: Eric Palatnik and Angelo Graci.

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

173-09-BZ
APPLICANT – Law Offices of Howard Goldman LLC, for 839-45 Realty LLC, owner; 839 Broadway Realty LLC, lessee.
SUBJECT – Application May 21, 2009 – Variance (§ZR 72-21) to allow for a four story mixed use building contrary to use regulations. (ZR §32-00, §42-00) C8-2 / M1-1 zoning districts.
PREMISES AFFECTED – 845 Broadway, between Locust and Park Streets, Block 3134, Lot 5, 6, 10, 11, Borough of Brooklyn.
COMMUNITY BOARD #4BK
APPEARANCES –
For Applicant: Chris Wright.

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for deferred decision.

219-09-BZ thru 223-09-BZ
APPLICANT – Gerald J. Caliendo, RA, for Daniel, Incorporated / East 147th Street LLC, owner.
SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow for five, two family residential buildings, contrary to §42-00. M1-2 district.
PREMISES AFFECTED – 802, 804, 806, 808 and 810 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue. Block 2582, Lots 10, 11, 110, 111 and 112, Borough of Bronx.

MINUTES

COMMUNITY BOARD # 1BX
APPEARANCES –
For Applicant: Sandy Anagnostou.
ACTION OF THE BOARD – Laid over to November 16, 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.
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 October 19, 2010, at 1:30 P.M., for decision, hearing closed.

309-09-BZ
APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.
SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.
PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.
COMMUNITY BOARD #11BK
APPEARANCES –
For Applicant: Harold Weinberg, Frank Sellitto, Ralph Stroffolino, Chris Andrani and Father D. Cassato.
For Opposition: Domenico Calcagno, Vincenza Calcagno, Vito Desento, Sal Ferrara and other.
ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for continued hearing.

35-10-BZ
APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.
SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue *(Congregation Torath Haim Ohel Sara),* contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.
PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Richard Lobel.
ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for continued hearing.

60-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Soho Thompson Realty, LLC, owner.
SUBJECT – Application April 26, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to §42-14(D)(2)(b). M1-5B zoning district.
PREMISES AFFECTED – 54 Thompson Street, northeast corner of Thompson Street and Broome Street, Block 488, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Richard Lobel and Robert Pauls.
ACTION OF THE BOARD – Laid over to November 9, 2010, at 1:30 P.M., for continued hearing.

104-10-BZ
APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.
SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.
PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Moshe M. Friedman.
ACTION OF THE BOARD – Laid over to November 16, 2010, at 1:30 P.M., for continued hearing.

105-10-BZ
APPLICANT – Eric Palatnik, for Misha Keylin, owner.
SUBJECT – Application October 2, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard regulations (§23-461). R4A zoning district.
PREMISES AFFECTED – 269 77th Street, between 3rd Avenue and Ridge Boulevard, Block 5949, Lot 54, Borough of Brooklyn.
COMMUNITY BOARD #10BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Susan Rinato and Dennis Albo.
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 October 19, 2010, at 1:30 P.M., for decision, hearing closed.

108-10-BZ
APPLICANT – Roberts Organization (LRNC Myrtle Avenue NY LLC) for 5432-50 Myrtle Avenue LLC, owner.
SUBJECT – Application June 11, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Lucille Roberts*) in an existing two-story building. C4-3 zoning district.
PREMISES AFFECTED – 54-32 Myrtle Avenue, intersection of Myrtle Avenue and Madison Street, Block 3544, Lot 27, Borough of Queens.
COMMUNITY BOARD #5Q
APPEARANCES –
For Applicant: Narnie R. Kudon.
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 October 26, 2010, at 1:30 P.M., for decision, hearing closed.

126-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Canarsie Plaza, LLC, owner; 1720 Hutchinson River Parkway, lessee.
SUBJECT – Application July 8, 2010 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Canarsie Fitness*) in a two-story building under construction. M1-1 zoning district.
PREMISES AFFECTED – 856 Remsen Avenue, south side of Remsen Avenue, Bock 7920, Lot 5, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Elizabeth Safian.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez...5
Negative:...0

ACTION OF THE BOARD – Laid over to October 26, 2010, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

***CORRECTION**

This resolution adopted on August 17, 2010, under Calendar No. 139-92-BZ and printed in Volume 95, Bulletin Nos. 33-34, is hereby corrected to read as follows:

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.
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 re-opening, and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 7, 2010; and

WHEREAS, a public hearing was held on this application on June 15, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010 and August 3, 2010, and then to decision on August 17, 2010; and

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

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Roosevelt Avenue, between 52nd Street and 53rd Street, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as Deseos; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1995, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the operation of an eating and drinking establishment with dancing (Use Group 12) on the first floor of an existing three-story building, for a term of three years; and

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

WHEREAS, most recently, on November 20, 2007, the Board granted an additional three-year term, which expired on March 7, 2010; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, at hearing, the Board raised concerns about the status of the rear of the property, and directed the applicant to establish that the rear area is not enclosed; and

WHEREAS, in response, the applicant submitted photographs reflecting that the rear area is unenclosed but has overhead beams that the applicant represents are required to support the air conditioning units; and

WHEREAS, the Board also directed the applicant to document that the sprinkler system at the site has been properly inspected and approved by the Department of Buildings; and

WHEREAS, in response, the applicant submitted a certificate for sprinkler inspection and monthly inspection reports; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens,* and *amends* the resolution, as adopted on March 7, 1995, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years from March 7, 2010, to expire on March 7, 2013, *on condition*:

THAT the term of this grant shall expire on March 7, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 420136944)

Adopted by the Board of Standards and Appeals, August 17, 2010.

***The Resolution has been corrected to amend the DOB Application No. which now reads:** *"DOB Application No. 420136944"*. **Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

***CORRECTION**

This resolution adopted on October 28, 2008, under Calendar No. 59-08-BZ and printed in Volume 93, Bulletin Nos. 41-43, is hereby corrected to read as follows:

59-08-BZ
CEQR #08-BSA-068R
APPLICANT – Sheldon Lobel, P.C., for 591-595 Forest Avenue Realty Corp., owner; Forest Avenue Fitness Group, LLC, lessee.
SUBJECT – Application March 17, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the first and second floors of an existing building. The proposal is contrary to section 32-10. C2-1 within R3X district.
PREMISES AFFECTED – 591 Forest Avenue, north side of Forest Avenue, between Pelton Avenue and Regan Avenue, Block 154, Lot 140, Borough of Staten Island.
COMMUNITY BOARD #1SI
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 Staten Island Borough Commissioner, dated July 6, 2008, acting on Department of Buildings Application No. 52003854, reads in pertinent part:

“A-1 application is filed to change building use to physical culture establishment. The use is subject to review & approval by Board of Standards & Appeals. ZR 73-36, 32-10.”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C2-1 (R3X) zoning district, the legalization of a physical culture establishment (PCE) in a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with continued hearings on August 26, 2008 and September 23, 2008, and then to decision on October 28, 2008; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the PCE enter into a contract with another business or property owner to utilize their parking facility; and

WHEREAS, residents of the surrounding community provided testimony in opposition to the proposal, citing concerns with parking, site maintenance, and noise; and

WHEREAS, the subject site is located on the north side of Forest Avenue, between Pelton Avenue and Regan Avenue; and

WHEREAS, the site is occupied by a two-story commercial building with a floor area of 11,424 sq. ft.; and

WHEREAS, the PCE occupies the entire building and is operated as “Planet Fitness”; and

WHEREAS, the applicant represents that the PCE will provide facilities for group training, body building, weight reduction, and aerobics; 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, at hearing, neighborhood residents testified as to a lack of parking for PCE patrons; and

WHEREAS, the applicant represents that the parking requirements under the current Zoning Resolution are not applicable because the subject building was constructed without parking accommodations pursuant to the 1916 Zoning Resolution; and

WHEREAS, the applicant further represents that the permitted use for the building, according to its certificate of occupancy, is for office use and that pursuant to ZR § 36-21, the parking requirements for a PCE are the same as the parking requirements for office use; and

WHEREAS, a parking study submitted by the applicant indicates that an as-of-right commercial use could potentially generate parking demand similar or greater than that of a PCE; and

WHEREAS, the applicant submitted an affidavit from the manager of the PCE, stating that the managers and/or owners of five businesses with parking facilities near the subject building were approached regarding the possibility of renting parking spaces for PCE patrons and that none of these businesses were willing to rent any parking spaces; and

WHEREAS the applicant further states that there are no licensed public parking lots or garages in the project vicinity; and

WHEREAS, the applicant represents, however, that the number of parking spaces in the surrounding area is adequate to serve the patrons of the facility; and

WHEREAS, the applicant provided an analysis of available parking within a 400-foot radius of the subject building indicating that metered spaces permitting up to two hours’ parking are located along Forest Avenue and metered as well as unmetered parking spaces are available on most side streets; and

WHEREAS, the analysis further indicates that, during a peak period of operation, 19 of the 68 metered spaces (28 percent) and 33 of the 133 unmetered spaces (24 percent) within 400 feet of the subject building were available to serve an estimated 50 patrons; and

WHEREAS, the current hours of operation are: Monday through Thursday, 24 hours daily; 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, at hearing, neighborhood residents complained about the noise generated by the PCE during evening hours; and

WHEREAS, the Board directed the applicant to reduce the hours of operation of the PCE to: Monday through Friday from 5:00 a.m. to 12:00 a.m.; and on Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, neighborhood residents also complained about debris outside the building; and

WHEREAS, in response, the Board directed the applicant to store refuse inside the building until the day of pick-up; 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 PCE will not interfere with any pending public improvement project; 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, 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 operated at the site since approximately February 14, 2008; and

WHEREAS, accordingly, the Board will reduce the term of the special permit for the period of time between February 14, 2008 and the date of this grant; 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. 08BSA068R dated June 27, 2008; 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, the Board has determined that the operation of the PCE 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 a C2-1 (R3X) zoning district, the legalization of a physical culture establishment in a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 27, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 14, 2018;

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

THAT the hours of operation of the PCE shall be limited to: Monday through 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.;

THAT the PCE shall store its refuse within the building until the time of pick-up;

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 Local Law 58/87 compliance shall be as reviewed and approved by DOB;

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, October 28, 2008.

***The Resolution has been corrected to amend the DOB Application No. which now reads:**
"Application No. 52003854". **Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

***CORRECTION**

This resolution adopted on August 3, 2010, under Calendar No. 13-10-BZ and printed in Volume 95, Bulletin No. 32, is hereby corrected to read as follows:

13-10-BZ
APPLICANT – Eric Palatnik, P.C., for Yakov Platnikov, owner.
SUBJECT – Application January 27, 2010 – Special Permit (§73-622) for the enlargement of an existing two -family home to be converted to a single family home, contrary to lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 79 Amherst Street, east side of Amherst Street, north Hampton Avenue, Block 8727, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:..0
THE RESOLUTION –

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

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

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

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

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

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

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

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

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

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,048 sq. ft. (0.49 FAR) to approximately 4,064 sq. ft. (0.98 FAR); the maximum floor area permitted is 2,080 sq. ft. (0.50 FAR); and

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

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

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

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

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

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

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

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

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

Therefore it is resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2)

and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for lot coverage, floor area, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 17, 2010"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,064 sq. ft. (0.98 FAR); an open space of 64 percent; a lot coverage of 36 percent; a side yard with a width of 10'-2" along the southern lot line; a side yard with a minimum width of 4'-10" along the northern lot line; and a rear yard with a minimum depth of 22'-10", as illustrated on the BSA-approved plans;

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

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

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

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

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

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

The resolution has been corrected in that the portion which read:** *"a side yard with a width of 10'-3" along the southern lot line;"* ***now reads: *"a side yard with a width of 10'-2" along the southern lot line;".* **Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**

***CORRECTION**

This resolution adopted on August 3, 2010, under Calendar No. 102-10-A and printed in Volume 95, Bulletin No. 32, is hereby corrected to read as follows:

102-10-A
APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc, owner; Tricia Kevin Davey, lessees.
SUBJECT – Application June 7, 2010 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.
PREMISES AFFECTED – 48 Tioga Walk, west side of Tioga Walk, south of 6th Avenue, Block 16350, Lot p/o400, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Gary Lenhart.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:...0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590, reads in pertinent part:

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

A2- The proposed upgraded private disposal system is in the bed of a mapped street and/or unmapped service road contrary to General City Law Article 3, Section 35 and Department of Buildings policy;” and

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

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

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

WHEREAS, by letter dated July 28, 2010, the Department of Transportation (DOT) states that it has reviewed the subject proposal and has no objections; and

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

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

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 1, 2010, acting on Department of Buildings Application No. 420141590 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 7, 2010”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

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

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

***The resolution has been revised to remove** *“provided the building is fully sprinklered”, and removed “That the home shall be sprinklered in accordance with the BSA-approved plans;”* **Corrected in Bulletin Nos. 40-41, Vol. 95, dated October 13, 2010.**