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CALENDAR

JANUARY 11, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 11, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1095-64-BZ
APPLICANT – Garo Gumusvan, R.A., for 605 Apartment Corporation, owner; Park & 65 Garage Corporation, lessee.
SUBJECT – Application August 31, 2010 – Extension of Term permitting the use of no more than 20 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which is set to expired on March 9, 1980. R8B & R-10 zoning district.
PREMISES AFFECTED – 605 Park Avenue, south east corner of Park Avenue and East 65th Street, Block 1399, Lot 74, Borough of Manhattan.
COMMUNITY BOARD #4M

749-65-BZ
APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.
SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) with accessory uses which expired on November 3, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.
PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.
COMMUNITY BOARD #2SI

119-07-BZ
APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.
SUBJECT – Application November 15, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) permitting a (UG4A) four-story community facility building which expires on January 27, 2011. M1-2 zoning district.
PREMISES AFFECTED – 443 39th Street, rectangular mid-block lot with 35' of frontage on the north side of 39th Street, 275' west of 5th Avenue, Bloc 705, Lot 59, Borough of Brooklyn.
COMMUNITY BOARD #7BK

APPEALS CALENDAR

216-10-A
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.
SUBJECT – Application November 12, 2010 – Appeal filed pursuant to Section 310(2) of the Multiple Dwelling Law seeking a variance of the court requirements under Section 26 of the Multiple Dwelling Law. C6-7 Zoning District.
PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42nd Street, Block 994, Lot 54, Borough of Manhattan.
COMMUNITY BOARD #5M

JANUARY 11, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 11, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

31-10-BZ
APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.
SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.
PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.
COMMUNITY BOARD #4Q

127-10-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.
SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.
COMMUNITY BOARD #15BK

173-10-BZ
APPLICANT – Nasir J. Khanzada, for Olympia Properties, LLC., owner.
SUBJECT – Application August 26, 2010 – Special Permit (§73-30) to legalize the operation of a physical culture establishment (*Olympia Spa*) located in a C2-4/R6B zoning district.
PREMISES AFFECTED – 65-06 Fresh Pond Road, west side of Fresh Pond Road, 45.89' south of corner of Linden Street and Fresh Pond Road, Block 3526, Lot 67, Borough of Queens.
COMMUNITY BOARD #5Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, DECEMBER 7, 2010
10:00 A.M.

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

SPECIAL ORDER CALENDAR

156-73-BZ
APPLICANT – Gary Maranga, R.A., for The Design Alliance, owner.
SUBJECT – Application October 12, 2010 – Extension of Term for surplus transient parking in a multiple dwelling which is accessory to Albert Einstein College of Medicine which expired on June 26, 2008; Waiver of the Rules. R6 zoning district.
PREMISES AFFECTED – 1975 Eastchester Road, west side of Eastchester Road at the intersection of Eastchester Road and Morris Park Avenue, Block 4205, Lot 2, Borough of Bronx.
COMMUNITY BOARD #11BX
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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for a transient parking garage, which expired on June 26, 2008; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, and then to decision on December 7, 2010; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of Eastchester Road and Morris Park Avenue, within an R6 zoning district; and

WHEREAS, the site is occupied by three 27-story residential buildings; and

WHEREAS, the accessory parking garage consists of three levels which are occupied by a total of 691 accessory parking spaces, including 113 transient parking spaces; and

WHEREAS, on June 26, 1973, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit the unused and surplus tenant parking spaces to be used for transient parking for a term of 15 years; and

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

WHEREAS, most recently, on December 22, 1998, the Board granted a ten-year extension of term, which expired on June 26, 2008; and

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

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions 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 having been adopted on June 26, 1973, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from June 26, 2008, to expire on June 26, 2018; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked 'Received November 30, 2010'-(3) sheets; and *on further condition*:

THAT this term shall expire on June 26, 2018;

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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. 220068432)

Adopted by the Board of Standards and Appeals, December 7, 2010.

180-99-BZ
APPLICANT – Michael T. Cetera, AIA, for Geulah, LLC, owner.
SUBJECT – Application June 4, 2010 – Extension of Term of a previously granted Variance (§72-21) for a non-

conforming (UG9A) catering establishment which expired on April 4, 2010; waiver of the rules. R6 zoning district.
PREMISES AFFECTED – 564/66 East New York Avenue, south side, 329'-7" east of Brooklyn Avenue, Block 4793, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #9BK
APPEARANCES –
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of catering establishment (Use Group 9A), which expired on April 4, 2010; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 9, 2010, and then to decision on December 7, 2010; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the south side of East New York Avenue between Kingston Avenue and Brooklyn Avenue, within an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1932 when, under BSA Cal. No. 573-31-BZ, the Board granted a variance to permit a public garage for the storage of motor vehicles (Use Group 16) on the site; and

WHEREAS, most recently, on April 4, 2000, under the subject calendar number, the Board granted a change in use under ZR § 11-413, from a vehicle storage establishment to a non-conforming catering/food preparation establishment (Use Group 9A) for a term of ten years, which expired on April 4, 2010; and

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

WHEREAS, at hearing, the Board raised concerns about the ventilation pipes extending into the sidewalk on the north side of the building; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the vents will be relocated from the north façade to the roof; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, 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 April 4, 2000, so that as amended this portion of the resolution shall read: "to extend the term for ten years from April 4, 2010, to expire on April 4, 2020; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received September 17, 2010'-(2) sheets and 'October 22, 2010'-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on April 4, 2020;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 300793461)

Adopted by the Board of Standards and Appeals, December 7, 2010.

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 July 12, 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 – 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 re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment (Use Group 6), which expired on July 12, 2010; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with continued hearings on October 19, 2010 and November 16, 2010, and then to decision on December 7, 2010; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site is located on the east side of Flatbush Avenue between Hendrickson Place and Shore Parkway, with a lot area of 93,525 sq. ft. within a C3 zoning district; and

WHEREAS, the site consists of a one-story building occupied by an eating and drinking establishment, operated as

Nick's Lobster; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 12, 2005 when, under the subject calendar number, the Board granted a special permit under ZR § 73-242 for an eating and drinking establishment for a term of five years, which expired on July 12, 2010; and

WHEREAS, the subject special permit was granted in conjunction with an application under BSA Cal. No. 345-03-A, to permit portions of the restaurant and parking lot to occupy a mapped street, pursuant to Section 35 of the General City Law; and

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

WHEREAS, at hearing, the Board questioned why the applicant had not obtained a certificate of occupancy since the initial grant; and

WHEREAS, in response, the applicant states that a certificate of occupancy has not been obtained because it was determined that it would not be practicable to bring the existing building into compliance due to its poor condition; accordingly, the applicant is in the process of obtaining financing to reconstruct the building; and

WHEREAS, at hearing, the Board questioned whether there was excess signage on the site; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the excess signage; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 12, 2005, so that as amended this portion of the resolution shall read: "to extend the term for a period of five years from July 12, 2010, to expire on July 12, 2015, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on July 12, 2015;

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. 2003141)

Adopted by the Board of Standards and Appeals, December 7, 2010.

200-24-BZ
APPLICANT – Stephen Ely, for Ebed Realty c/o Shelia Greco, owner.
SUBJECT – Application October 22, 2010 – Extension of Term (§11-411) for the continued operation of a UG6 bookstore and distribution center which expired on September 23, 2010. R8/C8-2 zoning district.
PREMISES AFFECTED – 3030 Jerome Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of Bronx.
COMMUNITY BOARD #7BX
APPEARANCES –
For Applicant: Stephen Ely.
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 January 11, 2011, at 10 A.M., for decision, hearing closed.

575-37-BZ
APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.
SUBJECT – Application July 16, 2010 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) which expired on February 14, 2008; waiver of the Rules. C1-3/R5B zoning district.
PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61st Street, Block 2697, Lot 51, Borough of Queens.
COMMUNITY BOARD #5Q
APPEARANCES –
For Applicant: Carl A. Sulfaro.
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 January 11, 2011, at 10 A.M., for decision, hearing closed.

230-98-BZ
APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.
SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.
PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Laid over to January

11, 2011, at 10 A.M., for continued hearing.

15-99-BZ
APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.
SUBJECT – Application August 18, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on June15, 2009; waiver of the rules. C5-3 (LM) zoning district.
PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M
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 January 11, 2011, at 10 A.M., for decision, hearing closed.

43-99-BZ
APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.
SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of a drive-thru accessory to an eating and drinking establishment (*White Castle*) which expired on December 7, 2009; Waiver of the Rules. C1-2/R4 zoning district.
PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88th Street, Block 1436, Lot 001, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Carl A. Sulfaro.
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 January 11, 2011, at 10 A.M., for decision, hearing closed.

299-99-BZ
APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.
SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.
PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Carl A. Sulfaro.
ACTION OF THE BOARD – Laid over to January 25, 2011, at 10 A.M., for continued hearing.

276-02-BZ
APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.
SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.
PREMISES AFFECTED – 160 Norfolk Street, west side, 300' north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
For Opposition: Susan Klapper.
ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for continued hearing.

118-10-BZ
APPLICANT – NYC Board of Standards and Appeals
OWNER – Arkady Nabatov
SUBJECT – Application June 28, 2010 – Dismissal for lack of prosecution – Special Permit (§11-411) to re-establish a variance for an auto-related use. R4 zoning district.
PREMISES AFFECTED – 2102/24 Avenue Z aka 2609/15 East 21st Street, Block 7441, Lot 371, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Laid over to December 14, 2010, at 10 A.M., for dismissal continued hearing.

APPEALS CALENDAR

43-08-A
APPLICANT – Akerman Senterfitt, for Bell Realty, owner.
SUBJECT – Application February 28, 2008 – Proposed construction in the bed of mapped street, contrary to General City Law Section 35. R2A zoning district.
PREMISES AFFECTED – 144-25 Bayside Avenue, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 43, Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Calvin Wong.
ACTION OF THE BOARD – 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, on December 10, 2009, and on acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 reads in pertinent part:

1. Proposed construction within the bed of a mapped street, requires BSA approval pursuant to GCL 35; and
2. Proposed construction of building with less than eight percent of the total perimeter of the building not fronting directly upon a street of frontage space requires BSA approval pursuant to GCL 36; and

WHEREAS, this is a proposal for the construction of three single-family homes located within the bed of a mapped street, 145th Street, (Tentative Lot 43 & 48) and not fronting on a mapped street Bayside Avenue (Tentative Lot 52) contrary to Section 35 and Section 36 of the General City Law; a fourth home, which fronts directly onto Bayside Avenue (Tentative Lot 46) is not part of the application; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in the *City Record*, with continued hearings on June 8, 2010, September 21, 2010, and November 9, 2010 and then to decision on December 7, 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, recommended approval of the application; and

WHEREAS, by letter dated February 2, 2010, the Department of Environmental Protection ("DEP") states that: (1) there is an existing 12- inch diameter private combined sewer and an eight-inch City water main in the bed of 145th Street between Bayside Avenue and 29th Road (north of Lot 41); (2) an existing 15–inch combined sewer and an existing six-inch City water main in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and (3) the Amended Drainage Plan No. 30B (1) calls for a future 12-inch diameter combined sewer in the bed of 145th Street between Bayside Avenue and 29th Road and for a future 15–inch diameter combined sewer in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of Bayside Avenue and the width of the widening portion of the street between Parsons Boulevard and 146th Street; (2) the distance between the lot lines of the proposed development and existing sewer and water mains; and (3) distance from the terminal manhole of the 12-inch diameter private combined sewer in 145th Street and from the end cap of the eight–inch diameter City water main in 145th Street to the northerly lot line of Lot 48; and

WHEREAS, in response to DEP's request, on March 12, 2010, the applicant submitted a revised Topographical Survey; and

WHEREAS, by letter dated April 12, 2010, DEP stated that it reviewed the revised survey and that the revised survey shows: (1) that 50 feet of the total width of 145th Street between Bayside Avenue (north of Lot 41) and 29th Road will be available for maintenance and/or reconstruction of the 12-inch diameter private combined drain and the eight-inch City water main; and (2) an irregular width of 70 feet for Bayside Avenue between Parsons Boulevard and 146th Street and that the remaining approximately 58 feet will be available for the installation, maintenance and/or reconstruction of the future 15-inch diameter combined sewer, existing 12-inch diameter private combined sewer and the six-inch diameter City water main; and

WHEREAS, DEP further notes that since the area is completely developed and all of the existing homes are either connected or fronting existing sewers/drains, the future 12-inch diameter combined sewer is not necessary in 145th Street; therefore, the applicant must file to amend the Drainage Plan; DEP also requires the applicant to provide a Certified Check in the amount of $5,000, payable to the NYC Water Board which will be released when the amendment is accepted; and

WHEREAS, in response to DEP's request, the applicant has agreed to amend the Drainage Plan; and

WHEREAS, by letter dated June 16, 2010, in response to the applicant's proposal, the Department of Transportation ("DOT") stated that it has reviewed the application and conducted a site visit which found several curb cuts for the immediately adjacent developments on both sides of 145th Street; and the current proposal shows a new driveway at the dead end shared by two residential units; and

WHEREAS, therefore, due to safety concerns, DOT objects to the construction of any buildings in the bed of 145th Street between 29th Road and Bayside Avenue; and

WHEREAS, in response, the applicant has set up a meeting with DOT and the Fire Department to address DOT's safety concerns; and

WHEREAS, as a result of the meetings, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated September 16, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) the dwellings shall maintain an unobstructed frontage space as per Rule 502.1 of the NYC Fire Code; and (4) hydrants must be within 250 feet of the main entrances to buildings and must be connected to an eight-inch or greater main; and (5) the request for a variance of curb cuts from 20 feet to 12 feet is granted due to the unsafe vehicle/pedestrian condition that a 20-ft. curb cut would create; and

WHEREAS, by letter dated September 29, 2010, DOT states that it reviewed the revised site plan and the approval letter from the Fire Department and has no further 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 December 10, 2009, acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 1, 2010" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT Drainage Plan No. 30B (1) be amended to the satisfaction of DEP prior to the issuance of 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

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, December 7, 2010.

3-10-A & 4-10-A

APPLICANT – Akerman Senterfitt, for Bell Realty, owner.

SUBJECT – Application January 5, 2010 – Proposed construction in the bed of mapped street, contrary to General City Law Section 35. R2A zoning district.

PREMISES AFFECTED – 144-25 Bayside Avenue and 29-46 145th Street, between 29th Road and Bayside Avenue, Block 4786, Lot 41 (tent) 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – 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, on December 10, 2009, and on acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 reads in pertinent part:

1. Proposed construction within the bed of a mapped street, requires BSA approval pursuant to GCL 35; and
2. Proposed construction of building with less than eight percent of the total perimeter of the building not fronting directly upon a street of frontage space requires BSA approval pursuant to GCL 36; and

WHEREAS, this is a proposal for the construction of three single-family homes located within the bed of a mapped street, 145th Street, (Tentative Lot 43 & 48) and not fronting on a mapped street Bayside Avenue (Tentative Lot 52) contrary to Section 35 and Section 36 of the General City Law; a fourth home, which fronts directly onto Bayside Avenue (Tentative Lot 46) is not part of the application; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in the *City Record*, with continued hearings on June 8, 2010, September 21, 2010, and November 9, 2010 and then to decision on December 7, 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, recommended approval of the application; and

WHEREAS, by letter dated February 2, 2010, the Department of Environmental Protection ("DEP") states that: (1) there is an existing 12- inch diameter private combined sewer and an eight-inch City water main in the bed of 145th Street between Bayside Avenue and 29th Road (north of Lot 41); (2) an existing 15–inch combined sewer and an existing six-inch City water main in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and (3) the Amended Drainage Plan No. 30B (1) calls for a future 12-inch diameter combined sewer in the bed of 145th Street between Bayside Avenue and 29th Road and for a future 15–inch diameter combined sewer in the bed of Bayside Avenue between Parsons Boulevard and 146th Street; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of Bayside Avenue and the width of the widening portion of the street between Parsons Boulevard and 146th Street; (2) the distance between the lot lines of the proposed development and existing sewer and water mains; and (3) distance from the terminal manhole of the 12-inch diameter private combined sewer in 145th Street and from the end cap of the eight–inch diameter City water main in 145th Street to the northerly lot line of Lot 48; and

WHEREAS, in response to DEP's request, on March 12,

2010, the applicant submitted a revised Topographical Survey; and

WHEREAS, by letter dated April 12, 2010, DEP stated that it reviewed the revised survey and that the revised survey shows: (1) that 50 feet of the total width of 145th Street between Bayside Avenue (north of Lot 41) and 29th Road will be available for maintenance and/or reconstruction of the 12-inch diameter private combined drain and the eight-inch City water main; and (2) an irregular width of 70 feet for Bayside Avenue between Parsons Boulevard and 146th Street and that the remaining approximately 58 feet will be available for the installation, maintenance and/or reconstruction of the future 15-inch diameter combined sewer, existing 12-inch diameter private combined sewer and the six-inch diameter City water main; and

WHEREAS, DEP further notes that since the area is completely developed and all of the existing homes are either connected or fronting existing sewers/drains, the future 12-inch diameter combined sewer is not necessary in 145th Street; therefore, the applicant must file to amend the Drainage Plan; DEP also requires the applicant to provide a Certified Check in the amount of $5,000, payable to the NYC Water Board which will be released when the amendment is accepted; and

WHEREAS, in response to DEP's request, the applicant has agreed to amend the Drainage Plan; and

WHEREAS, by letter dated June 16, 2010, in response to the applicant's proposal, the Department of Transportation ("DOT") stated that it has reviewed the application and conducted a site visit which found several curb cuts for the immediately adjacent developments on both sides of 145th Street; and the current proposal shows a new driveway at the dead end shared by two residential units; and

WHEREAS, therefore, due to safety concerns, DOT objects to the construction of any buildings in the bed of 145th Street between 29th Road and Bayside Avenue; and

WHEREAS, in response, the applicant has set up a meeting with DOT and the Fire Department to address DOT's safety concerns; and

WHEREAS, as a result of the meetings, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated September 16, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) the dwellings shall maintain an unobstructed frontage space as per Rule 502.1 of the NYC Fire Code; and (4) hydrants must be within 250 feet of the main entrances to buildings and must be connected to an eight-inch or greater main; and (5) the request for a variance of curb cuts from 20 feet to 12 feet is granted due to the unsafe vehicle/pedestrian condition that a 20-ft. curb cut would create; and

WHEREAS, by letter dated September 29, 2010, DOT states that it reviewed the revised site plan and the approval letter from the Fire Department and has no further 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 December 10, 2009, acting on Department of Buildings Application Nos. 420039425, 420039434, and 420039416 is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received December 1, 2010" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT Drainage Plan No. 30B (1) be amended to the satisfaction of DEP prior to the issuance of 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

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, December 7, 2010.

137-08-A thru 139-08-A

APPLICANT – Philip L. Rampulla, for Joseph Noce, owner.

SUBJECT – Application May 5, 2008 – Proposed construction of a one-family residence within the bed of a mapped street, contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 50, 55, 60 Blackhorse Court, south side of Richmond Road, 176.26' south of Blackhorse Court, Block 4332, Lots 34, 28, 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 7, 2010, acting on Department of Buildings Application Nos. 510033811 and 510033839 reads in pertinent part:

> "Proposed construction of a one family residence building within bed of a map street is contrary to general city law 35 and requires a special permit by the New York City Board of Standards and Appeals;" and

WHEREAS, this is an application to permit, as part of a proposed development consisting of the construction of seven single-family homes, the proposed construction of two single-family homes located within the bed of a mapped street, Morton Street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010 and November 9, 2010, and then to decision on December 7, 2010; and

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

WHEREAS, the applicant initially proposed to construct three single-family homes in the bed of a mapped street, however, the application was amended such that only two single-family homes are now proposed in the bed of a mapped street; the application filed for the third home, under BSA Cal. No. 139-08-A, has been withdrawn; and

WHEREAS, Community Board 2, Staten Island, recommended approval of the initial version of the application; and

WHEREAS, by letter dated June 16, 2008, in response to the applicant's initial proposal, the Department of Environmental Protection ("DEP") states that: (1) there is an existing ten-inch diameter sanitary sewer and an eight-inch diameter water main in Morton Street between Wilder Avenue and Maplewood Avenue, and an existing ten-inch diameter sanitary sewer and an eight-inch diameter water main in Maplewood Avenue between Morton Street and Ardsley Street; and (2) as per Drainage Plan No. D-3, sheet 2 of 7, there is a future ten-inch diameter sanitary sewer and an 18-inch diameter storm sewer in Morton Street between Wilder Avenue and Maplewood Avenue, and a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Maplewood Avenue between Morton Street and Ardsley Street; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing the following: (1) the mapped width of the street in Morton Street between Wilder Avenue and Maplewood Avenue and a 32-ft. wide "Sewer Corridor" in Morton Street between Wilder Avenue and Maplewood Avenue for the installation, maintenance and/or reconstruction of the future ten-inch diameter sanitary sewer and 18-inch diameter storm sewer; and (2) the distance from existing water main, sewers, sewer manholes and water main caps to the lot lines in Morton Street between Wilder Avenue and Maplewood Avenue; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey dated May 4, 2010; and

WHEREAS, by letter dated June 11, 2010, DEP states that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated December 17, 2009, addressing the adequacy of the newly created street, Blackhorse Court, for Fire Department access, the Fire Department stated that it approved the creation of Blackhorse Court with the following conditions: (1) interconnected smoke alarms be designed and installed in compliance with NYC Building Code Section 907.2.10 (2) a fire apparatus access road shall be constructed in accordance with the requirements of FDNY FC 503.2.1; (3) the height of the homes shall not exceed 35 feet above grade plane; and (4) Morton Street is to be opened fully to a curb to curb width of 34 feet; and

WHEREAS, by letter dated November 3, 2010, addressing the applicant's proposal to construct two homes in the bed of Morton Street, the Fire Department states that it objects to the construction of any buildings in the bed of Morton Street because Morton Street should be opened as a Final Mapped street to improve emergency response in the area of Richmond Road and surrounding areas; and

WHEREAS, by letter dated September 22, 2010, the Department of Transportation ("DOT") states that the current development plan will hinder traffic circulation to the general Richmond Road area and prevent DOT from any future construction of Morton Street to provide mobility within the area; therefore, DOT objects to the proposed construction within the bed of the mapped street; and

WHEREAS, in response to the objections raised by the Fire Department and DOT, the applicant notes that Morton Street was mapped on March 22, 1962, and that the City has made no attempt to acquire the bed of Morton Street in the intervening 48 years; and

WHEREAS, the applicant represents that constructing the unbuilt portion of Morton Street would not improve any existing traffic patterns or alleviate any existing traffic problems, as Morton Street is merely a tertiary street and has no impact on the surrounding street system; and

WHEREAS, the applicant submitted a tax map reflecting that a portion of the unbuilt bed of Morton Street is owned by the adjacent neighbor; therefore, even if the applicant opened the portion of Morton Street over which it has ownership, Morton Street would still result in a dead-end due to the intervening portion of the street that is owned by the neighbor; and

WHEREAS, the applicant states that there is a 12-ft. change in grade at Morton Street to the west of the site, and that in order to open and improve this portion of Morton Street large retaining walls would have to be built on both sides of the street, the cost of which would make the project financially infeasible; and

WHEREAS, in support of this statement, the applicant

submitted two alternative site plans for a development scenario where the portion of Morton Street owned by the applicant is built out to a width of 34 feet, and a cost estimate indicating that constructing the retaining walls alone would cost between $342,000 and $388,000; and

WHEREAS, at the Board's direction, the applicant also submitted two alternative site plans for a development scenario in which Morton Street remained unopened, but where no development was proposed in the mapped bed of Morton Street; and

WHEREAS, the alternative plans submitted by the applicant reflect that a development in which no homes are built in the mapped bed of Morton Street reduces the number of homes that can be constructed from seven to six, thereby significantly restricting the development potential of the site; and

WHEREAS, the applicant states that the proposed development of seven single-family homes yields a floor area ratio ("FAR") of 0.36, and is therefore already well below the maximum permitted FAR of 0.50 in the subject R1-2 zoning district; and

WHEREAS, the applicant further states that Blackhorse Court, a newly created street, has already been constructed, including the installation of curbs, asphalt paving, an eight-inch water main, a fire hydrant and sanitary sewers, and that the alternative plans in which no homes are built in the mapped bed of Morton Street would result in the partial removal of the street and utilities that were recently installed for Blackhorse Court; and

WHEREAS, the Board acknowledges that the objections raised by the Fire Department and DOT were based on legitimate policy considerations, however, based upon the above, the Board has determined that the applicant has submitted sufficient evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated October 7, 2010, acting on Department of Buildings Application Nos. 510033811 and 510033839, 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 December 1, 2010" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT interconnected smoke alarms shall be designed and installed in compliance with NYC Building Code Section 907.2.10;

THAT a fire apparatus access road shall be constructed in accordance with the requirements of FDNY FC 503.2.1;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2010.

38-10-A

APPLICANT – Jack Lester, Esquire for Anthony Naletilic.
OWNER – K.J. Chung/Jesus Covent Church.
SUBJECT – Application March 22, 2010 – Appeal challenging the Department of Building's issuance of a building permit to allow for the waiver of parking per §25-35 for a house of worship/community facility. R2A zoning district.
PREMISES AFFECTED – 26-18 210th Street, corner lot on 27th Avenue and 210th Street, Block 5992, Lot 36, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES – None.
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to the determination of the Queens Borough Commissioner of the Department of Buildings ("DOB"), dated February 19, 2010, to uphold the approval of New Building Permit No. 410146881-01-NB (the "Permit"), for the construction of a house of worship at the subject site (the "Final Determination"); and

WHEREAS, the Final Determination reads, in pertinent part:

> Section 25-33 of the ZR provides for a waiver of the parking requirements of Section 25-31 in R2 districts in the event that the total number of accessory off-street parking spaces is less than ten (10). In this case, the total number of accessory off-street parking spaces for this House of Worship, pursuant to the parking calculations provided in Section 25-31 of the ZR, is nine (9)…Since the total number of required accessory off-street parking is less than ten (10) spaces, the Subject Premises qualifies for a parking waiver pursuant to Section 25-33 of the ZR.
>
> ***
>
> Based on the fact that this is a corner lot within 100' of the corner, which does not contain a rear yard per the ZR, the Subject Premises is not

required to meet the rear yard requirements of Section 24-36 or 24-391 of the ZR.

Finally, you state that the Subject Premises is not in compliance with Section 27-526 of the Administrative Code of the City of New York (the "Administrative Code") based on its proximity to a Con-Edison sub-station which you claim contains explosive content . . . The Department has not been provided with any basis to support your assertion that the Con-Edison sub-station stores or contains explosive contents

***

Based on the fact that the applicant has cured all outstanding objections and that your claims of non-compliance with the ZR and the Construction Code are not supported, the Department has determined that Permit No. 410146881-01-NB was lawfully issued. This is a Final Determination of the Department that may be appealed to the Board of Standards and Appeals; and

WHEREAS a public hearing was held on this application on October 19, 2010 after due notice by publication in *The City Record*, and then to decision on December 7, 2010; and

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

WHEREAS, City Council Member Daniel J. Halloran, III, submitted testimony in support of this appeal; and

WHEREAS, New York State Senator Frank Padavan submitted testimony in support of this appeal; and

WHEREAS, the Bayside Preservation Association, and the Auburndale Improvement Association, provided testimony in support of this appeal; and

WHEREAS, the subject site is located at 26-18 210th Street, within an R2 zoning district; and

WHEREAS, the instant appeal concerns whether the subject house of worship qualifies for a waiver of the requirement for accessory off-street parking spaces pursuant to ZR § 25-33; and

WHEREAS, this appeal is brought on behalf of the owner of 209-40 27th Avenue (the "Appellant"); the Appellant was represented by counsel in this proceeding; and

WHEREAS, DOB and the owner of 26-18 210th Street (the "Owner") have been represented by counsel throughout this appeal; and

PROCEDURAL HISTORY

WHEREAS, on June 18, 2009, DOB approved construction of the subject house of worship pursuant to DOB Application No. 410146881; and

WHEREAS, on July 8, 2009, counsel for the Appellant wrote to the Queens Borough Commissioner requesting a final determination from DOB regarding whether the subject site: (1) meets the parking requirements of the Zoning Resolution; (2) meets the rear yard requirements of the Zoning Resolution; and (3) complies with Administrative Code § 27-526, based on the proximity of the site to a Con-Edison sub-station which purportedly contains explosive content; and

WHEREAS, in response, DOB conducted an audit of the Permit and issued an Intent to Revoke Approval and Permit letter, along with a Notice of Objections, dated July 14, 2009; and

WHEREAS, DOB conducted a second audit of the Permit and issued another Intent to Revoke Approval and Permit letter and another Notice of Objections dated December 14, 2009; and

WHEREAS, the Owner subsequently amended the plans for the subject site in response to the objections issued by DOB; and

WHEREAS, on January 28, 2010, DOB determined that all objections had been cured and that the Permit was lawfully issued; accordingly, on February 5, 2010, DOB issued a Rescind Notice of Intent to Revoke Approval and Permit letter; and

WHEREAS, on February 19, 2010, the Queens Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on March 22, 2010, the Appellant filed the instant appeal at the BSA seeking a revocation of the Permit; and

WHEREAS, the Board notes that the Final Determination on which the instant appeal is based addresses the Appellant's arguments regarding the site's compliance with rear yard requirements and its proximity to a Con-Edison substation; however, these arguments were not pursued by the Appellant subsequent to DOB's issuance of the Final Determination, and therefore are not addressed by the Board as part of the subject appeal; and

ISSUES PRESENTED

WHEREAS, the Appellant contends that the Permit should be revoked for the following reasons: (i) the site does not qualify for a waiver of the parking requirement under ZR § 25-33, and DOB arbitrarily and capriciously allowed the owner to amend the application from a place of assembly with no fixed seating to a place of assembly with fixed seating in order to qualify for the waiver; (ii) an alternate seating plan in which the wheelchair seats are converted to temporary seats must be provided in accordance with Construction Code § 1024.1.3; (iii) the seating plan fails to include at least four statutorily mandated companion seats adjacent to the four wheelchair spaces provided; and (iv) the approved plans do not comply with the accessibility requirements of the Construction Code; and

(*i*) *The Calculation of the Parking Requirement*

WHEREAS, the Appellant contends that the subject site does not meet the requirements for an accessory off-street parking waiver pursuant to ZR § 25-33 because the building has space to accommodate more than 100 occupants; and

WHEREAS, in response, DOB states that pursuant to ZR § 25-31, the number of required parking spaces for a house of worship is based on a calculation of the rated capacity of a space, which "shall be determined by the Commissioner of Buildings;" and

WHEREAS, DOB states that it determines the rated capacity of a space by calculating the occupant load according to Construction Code § BC 1004, and that Construction Code § BC 1004.1 states that the occupant load shall be established by the largest number computed in accordance with Construction Code §§ BC 1004.1.1 through BC 1004.1.3; and

WHEREAS, DOB further states that Construction Code § BC 1004.1.1, which computes the occupant load of a space by using the actual number of occupants for which a space is designated, accounts for the largest number among Construction Code §§ BC 1004.1.1 through BC 1004.1.3 and is therefore the appropriate standard for determining the occupant load at the site; and

WHEREAS, DOB further states that the approved plans indicate that the place of assembly space will consist of 80 seats fixed to the floor, four wheelchair spaces, and a raised platform which has space for ten movable chairs, for a total of 94 occupants; and

WHEREAS, on November 12, 2010, DOB issued a Certificate of Occupancy (the "CO") for the subject site which allows a maximum of 94 persons in the space, and on June 23, 2010 DOB issued a Place of Assembly Certificate of Operation (the "PACO") in association with the approved plans, which also allows a maximum of 94 persons in the space; and

WHEREAS, DOB states that ZR § 25-31 requires that a house of worship in an R2 zoning district provide one accessory off-street parking space for every ten occupants; therefore, the subject site is required to have nine accessory of-street parking spaces based on its occupant load of 94; and

WHEREAS, accordingly, DOB concludes that pursuant to ZR § 25-33, the subject site is eligible for a waiver of the parking requirements of ZR § 25-31 because the total number of accessory off-street parking spaces is less than ten; and

WHEREAS, as to the calculation of the parking requirement, the Board agrees with DOB that based on the parking calculations of ZR § 25-31, the subject site qualifies for a waiver of the accessory off-street parking regulations pursuant to ZR § 25-33; and

WHEREAS, the Appellant also argues that the plans for the proposed house of worship originally included a non-fixed seating plan with space for 121 people, based on a calculation using square feet per occupant, and that DOB arbitrarily and capriciously allowed the owner to amend the plans on January 27, 2010 from a place of assembly with non-fixed seating to a place of assembly with fixed seats in order to qualify for a waiver of the parking requirements; and

WHEREAS, in response, DOB states that there is no Construction Code or other provision which restricts the Owner from amending its seating plan from non-fixed seating to fixed seating; and

WHEREAS, DOB further states that the CO and PACO allow a maximum occupancy of 94 persons at the subject site and if the number of occupants exceeds the legally permissible number DOB would handle such an event as an enforcement issue, however, it would not have been permissible for DOB to deny a CO or PACO based on a complaint that more than the legally permissible number of occupants could potentially occupy the subject site at a given time; and

WHEREAS, the Board agrees with DOB that the Owner has the right to amend its seating plan from non-fixed seating to fixed seating, and notes that the layout of the approved seating plan appears to be rational and appropriate; and

WHEREAS, the Appellant also contends that the owner has failed to comply with Administrative Code § BC 1004.1.5, which requires that the occupant load be established by a registered design professional, subject to the approval of the Commissioner; and

WHEREAS, in response, DOB states that Construction Code § BC 1004.1.5 requires the registered design professional to establish an occupant load only when the per person occupancy is not listed in Administrative Code Table 1004.1.2; and

WHEREAS, accordingly, DOB argues that Administrative Code § 1004.1.5 is not applicable to the subject site because Table 1004.1.2 specifically includes a use of space as a place of assembly with fixed seats and refers to Administrative Code § 1004.7 to determine the occupant load; and

WHEREAS, the Board agrees with DOB that the occupant load did not have to be established by a registered design professional in the instant case; and

(ii) Whether an Alternate Seating Plan is Necessary

WHEREAS, the Appellant contends that the approved plans do not provide for an alternate seating plan as required by Construction Code § BC 1024.1.3, which provides that for "every place of assembly providing seating or other moveable furnishings, copies of approved plans and *approved alternate plans* shall be kept on the premises [emphasis added];" and

WHEREAS, the Appellant further argues that the alternate seating plan must show the maximum number of occupants for the site, which in this case would involve an alternate seating plan that shows the conversion of each wheelchair seat into multiple temporary seats; and

WHEREAS, specifically, the Appellant states that Construction Code § BC 1108.2.2 provides that wheelchair spaces and seats which are unsold 24 hours prior to an event shall be permitted to be released for sale to the public, including to persons without physical disabilities; and

WHEREAS, the Appellant argues that the removal of wheelchair spaces will create additional seats because each wheelchair space can be converted into multiple temporary seats, thereby increasing the parking requirement such that the site would not be eligible for the parking waiver pursuant to ZR § 25-33; and

WHEREAS, in response, DOB contends that there is no Construction Code or other DOB requirement for more than one place of assembly seating plan and the Appellant's claim that Construction Code § BC 1024.1.3 requires an

alternate seating plan at the subject site is erroneous; and

WHEREAS, DOB represents that the purpose of Construction Code § BC 1024.1.3 is to require that all approved place of assembly seating plans be available at the premises for inspection and that they contain the pertinent information; and

WHEREAS, DOB states that where a place of assembly operates without fixed seats and where the building owner would like to utilize multiple seating arrangements, more than one seating plan may be submitted to DOB for approval, however, since the subject site has fixed seats it is appropriate that only one seating plan has been approved, and an alternate seating plan is not required; and

WHEREAS, DOB further states that in the event that the approved seating plan is not complied with, DOB will take appropriate enforcement action at that time; and

WHEREAS, the Board agrees with DOB that the Appellant has not provided any Construction Code or other provision that requires more than one place of assembly seating plan for the site, and that Construction Code § BC 1024.1.3 only requires that an alternate seating plan be located on the premises if such an alternate seating plan exists; as noted above, the subject house of worship is only approved for one seating plan; and

WHEREAS, in response to the Appellant's claim that the approved plans do not comply with Construction Code § BC 1108.2.2 with respect to potential unsold seats being released for sale to the public, DOB states that the approved plans do comply because all four wheelchair spaces will be available at all times and Construction Code § BC 1108.2.2 does not mandate any change in the total number of seating or occupants legally permitted, nor does it require an additional calculation to the number of seats based on unsold seats; and

WHEREAS, the Owner argues that the wheelchair seating at the subject site is permanently established and will not be converted to temporary seating in any circumstance, and that even if such a conversion were contemplated, the site is limited to a maximum occupancy of 94 persons by the CO and PACO; and

WHEREAS, the Owner further argues that Construction Code § BC 1108.2.2, which discusses the release of unsold wheelchair seats for sale to the public, is only meant to apply to certain places of assembly, such as theaters, arenas or stadiums, and that it does not apply to the subject house of worship because it does not sell seats to the public; and

WHEREAS, the Board agrees with DOB and the Owner that, to the extent that it even applies to a house of worship, Construction Code § BC 1108.2.2 does not impose a requirement that the Owner release unused wheelchair seats to the public, nor does it permit the Owner to convert each wheelchair space into multiple temporary seats for persons without physical disabilities, which would not be permitted by the CO or PACO, both of which limit the occupancy of the site to 94 persons; and

WHEREAS, the Board notes that even if an alternate seating plan were required, there is no basis for providing an alternate seating plan that lacks the required wheelchair spaces and would therefore not comply with the Construction Code, as suggested by the Appellant; and

(iii) Whether the Necessary Companion Seats are provided on the Seating Plan

WHEREAS, the Appellant states that Construction Code § BC 1108.2.5 provides that "at least one companion seat complying with ICC A117.1, including Section 802.7 (Companion Seat) shall be provided for each wheelchair space required by Section 1108.2.2;" and

WHEREAS, the Appellant contends that the seating plan fails to provide the four companion seats required to accompany the four required wheelchair spaces; and

WHEREAS, the Appellant further contends that the addition of the companion seats raises the number of required seats to 98, which increases the parking requirement from nine spaces to ten spaces, thereby making the site ineligible for the parking waiver under ZR § 25-33; and

WHEREAS, in response, DOB stated that the four required companion seats are provided within the total number of seats (94), not in addition to the total number of seats; and

WHEREAS, DOB further states that International Council Code/American National Standard Institute ("ICC/ANSI") A117.1, Section 802.7 governs the type and alignment of companion seats, and that each companion seat at the subject site complies with the type and alignment requirements of ICC/ANSI A117.1, Section 802.7; and

WHEREAS, the Appellant subsequently argued that the companion seating is not compliant because it was not specifically delineated on the seating plan; and

WHEREAS, in response, DOB states that an amended seating plan was approved on November 17, 2010 which specifically delineates the location of the companion seating; and

WHEREAS, accordingly, the Board agrees with DOB that the necessary companion seats have been provided at the site and are properly delineated in the approved seating plan; and

(iv) Whether the Seating Plan Satisfies Accessibility Requirements

WHEREAS, the Appellant argues that the plans do not meet the accessibility requirements of the Construction Code because the companion seats block the aisle accessway and therefore the egress to the aisle; and

WHEREAS, DOB states that Construction Code § BC 1002 defines an aisle accessway as "that portion of an exit access that leads to an aisle," which at the subject site is the space between the fixed seating; and

WHEREAS, DOB notes that the approved seating plan reflects that the width of the aisle accessway is 12 inches, as required under Construction Code § BC 1024.10; and

WHEREAS, DOB states that Construction Code § BC 1024.10.2 specifies that the maximum number of seats in a single access row is eight, and that because the aisle where the wheelchair space is located has fewer than eight seats,

single access to an aisle is all that is required under the Construction Code; and

WHEREAS, DOB argues that the approved seating plan reflects that dual access is provided to the aisles where the wheelchair seats are located and therefore the Construction Code requirement for egress to an aisle is exceeded because occupants of the row have the ability to access multiple egress routes in the event of an emergency; and

WHEREAS, the Appellant also contends that the location of the wheelchair seating on the approved seating plan blocks the aisle and creates a fire hazard; and

WHEREAS, in response, DOB states that the location of the wheelchair seating is not considered an obstruction to the aisle, nor does it violate the minimum aisle widths prescribed in Construction Code § BC 1024.9 because wheelchairs are mobile, are operated by individuals as a personal device for mobility, and are removed by the users of the wheelchairs upon exiting; therefore, wheelchairs are not stationary building fixtures or elements and, as such, are not subject to aisle widths requirements; and

WHEREAS, the Board agrees with DOB that the approved seating plan satisfies the accessibility requirements of the Construction Code as to aisle access and the location of the wheelchair seats; and

WHEREAS, during the course of the hearing, the Appellant provided alternate plans showing 106 seats at the site, which would increase the required number of parking spaces such that the site would not be eligible for a waiver under ZR § 25-33; the Appellant contends that these plans reflect that DOB erroneously waived the parking requirement; and

WHEREAS, the Board finds no merit in the alternate plans submitted by the Appellant because the Appellant has failed to establish that the approved seating plan does not comply with the Construction Code or that the alternate plans do comply with the Construction Code; and

WHEREAS, the Board notes that the Appellant's final submission raised additional arguments which were not part of the initial appeal filed by the Appellant and which the Board finds are not part of the subject appeal; and

WHEREAS, specifically, the Appellant's final submission argues that the CO was wrongfully issued and that the approved seating plan does not reflect the minimum aisle width required by the Construction Code; and

WHEREAS, notwithstanding the fact that these issues are not properly before the Board under the subject appeal, the Board finds that the Appellant failed to provide sufficient evidence to establish that the CO was wrongfully issued or that the approved seating plan does not comply with the Construction Code as to aisle widths; and

WHEREAS, therefore, the Board finds that DOB properly waived the parking requirement for the subject house of worship pursuant to ZR § 25-33 because the site has a total occupant load of 94 persons and a corresponding parking requirement of nine spaces under ZR § 25-31; and

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

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated February 19, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, December 7, 2010.

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

APPEARANCES –

For Applicant: Courtney K Merca.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated June 29, 2010 by the Manhattan Borough Commissioner of the NYC Department of Buildings ("DOB") (the "Final Determination") addressed to the owner of the commercial condominium unit at 105 West 72nd Street (the "Appellant" and the "Building"), with respect to DOB Application Nos. 110255991 and 110359594; and

WHEREAS, the Final Determination states, in pertinent part:

> By letter dated December 18, 2008, the Department of Buildings ("the Department") notified you of its intent to revoke the approvals and permits associated with the above-captioned applications. The intent to revoke was based on an audit of the plans by the Department and on a complaint that owner's authorization for the applications had not been submitted in accordance with Section 27-1401 of the

1 Section 27-140 of the Administrative Code of the City of New York ("AC") has been re-codified as Section 28-104.8.2, effective July 1, 2008, and the latter is the appropriate provision in effect at all relevant periods discussed herein, rather than Section 27-140, which DOB erroneously cited in the Final Determination. The language of the new provision varies slightly from Section 27-140, but DOB states that its interpretation of the requirement created by both sections is the same.

Administrative Code of the City of New York ("AC").

By letter dated March 29, 2009, the Department revoked the permits. On or about April 12, 2010, a Department examiner determined that all technical objections raised during the above-referenced audit had been cured. Aspects of this determination were also reviewed and affirmed by Technical Affairs.

Notwithstanding that acceptable cures have been received, the Department hereby declines to reinstate the permit, rescind the revocation of the approvals and permits, or rescind the Stop Work Order in effect because there continues to be a failure to comply with AC § 27-140. Pursuant to that section, the condominium board must authorize the applications. The Department will not issue a work permit unless and until such authorization has been submitted; and

WHEREAS, a public hearing was held on this appeal on October 26, 2010, after due notice by publication in *The City Record*, and then to decision on December 7, 2010; and

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

WHEREAS, representatives of the Board of Managers of the 105 West 72nd Street Condominium (the "Managers") provided written and oral testimony in opposition to the appeal; and

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

WHEREAS, the appeal concerns the authorization requirement in the AC, which DOB invoked when it audited Appellant's alteration permit to construct a daycare center in its cellar level condominium unit (the "Unit") of a 12-story primarily residential building; and

PROCEDURAL HISTORY

WHEREAS, on September 24, 2008, the Appellant filed an alteration permit application, under DOB Application No. 110255991 to renovate the Unit under DOB's professional certification program, and the initial work permit was issued on November 1, 2008; and

WHEREAS, on October 24, 2008, the Appellant filed DOB Application No. 110359594 to obtain a new Certificate of Occupancy, which was required for the change in use of the cellar from boiler room and storage to a daycare center; and

WHEREAS, in the owner's information section of both applications, the Appellant provided: "Nader Ohebshalom" and the business name "N&J Associates, LLC," which reflects the condominium unit owner/Appellant; the owner type selected was "Partnership," rather than "Condo Unit Owner," which was left blank; and

WHEREAS, pursuant to the application form, when "Condo Unit Owner" is selected, applicants are then directed to have their Condo/Co-op Board complete the next section of the application; and

WHEREAS, DOB received a complaint from the Managers that owner's authorization had not been submitted in accordance with the AC, and then conducted a special audit of the approval, and concluded that the Managers' authorization was required, pursuant to the AC; and

WHEREAS, accordingly, on December 18, 2008, DOB issued an Intent to Revoke Approval(s) based on the Appellant's failure to provide the Managers' authorization to the applications; and

WHEREAS, DOB rejected the Appellant's subsequent attempts to establish that it did not need the Managers' authorization to make the application and, thus, on March 25, 2009, DOB revoked the permits and approvals for both applications; and

WHEREAS, in April 2009, the Appellant (and its tenant) commenced (1) an Article 78 proceeding (to challenge the March 25, 2009 decision to revoke the permits) against the City of New York, and (2) a declaratory judgment action (seeking an order declaring that the Managers did not have to sign the application) against the City of New York and the Managers; and

WHEREAS, DOB moved to dismiss the Article 78 proceeding based on the Appellant's failure to exhaust its administrative remedies; and

WHEREAS, by order dated June 9, 2009, the court ("Justice Friedman's Decision") agreed with the City that the interpretation of the Building Code falls within DOB's expertise and the Appellant must exhaust its administrative remedies by appealing DOB's determination to the BSA and, thus dismissed the Article 78 proceeding in its entirety; and

WHEREAS, the City then moved to dismiss the declaratory judgment action on the grounds of *res judicata* and collateral estoppel; and

WHEREAS, by order dated, September 16, 2009, the court granted the motion and dismissed DOB from the declaratory judgment action; and

WHEREAS, the remainder of the declaratory judgment action was before Justice Edmead; by order dated February 18, 2010, Justice Edmead decided a number of issues including those related to the ownership rights of the Unit as well as holding that the Managers were not required to authorize the renovations, which she concurred were legal, pursuant to AC § 28-104.8.2; and

WHEREAS, Justice Edmead's decision stated "since the Plan specifically states the Board's approval for renovations to a commercial unit is not required, it follows that a commercial unit owner's signature on the permit application, as authorized by the Plan and the Administrative Code, is sufficient;" and

WHEREAS, the Appellant returned to DOB with Justice Edmead's order and DOB rejected the order in place of the Managers' authorization; and

WHEREAS, on June 29, 2010, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal, which states that it requires the condominium association (the Managers') authorization before it will grant the requested approvals; and

THE PROVISION OF THE BUILDING CODE RELEVANT

TO THIS APPEAL

WHEREAS, AC § 28-104.8.2 reads as follows:

> The application shall contain a signed statement by the owner, cooperative owners' corporation, or condominium owners' association stating that the applicant is authorized to make the application and, if applicable, acknowledging that construction documents will be accepted with less than full examination by the department based on the professional certification of the application. Such statement shall list the owner's full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurers; and

WHEREAS, as discussed in more detail below, the Final Determination is based on DOB's interpretation of AC § 28-104.8.2 that applications involving work to be performed in condominium buildings must include authorization from the condominium owners' association and that authorization from a single condominium unit owner is insufficient; and

DISCUSSION

A. The Interpretation of New York City Administrative Code Section 28-104.8.2

WHEREAS, the Appellant asserts that AC § 28-104.8.2 permits either the owner of the unit or the condominium association to sign the application and that DOB misinterprets the text by requiring the condominium association's (the Managers, here) authorization; and

WHEREAS, the Appellant relies on Justice Edmead's analysis of AC § 28-104.8.2, which concludes that the code section creates a distinction in that it permits either the owner of the unit or the condominium association to sign the application and, in order to determine which signature is required on a specific application, one must look to the governing documents of the condominium; and

WHEREAS, the Appellant asserts that in order to determine whether to require the signature of the owner of the unit or the condominium association, one must look to the governing documents of the condominium and that, according to the condominium plan and the by-laws of the Building, the Managers must approve renovations to individual residential units, but not to commercial units and, thus, the Appellant's authorization on the DOB permit application complies with AC § 28-104.8.2; and

WHEREAS, the Appellant cites to Justice Edmead's February 22, 2010 order to support its assertion that the Managers' signature is not required:

> [the Appellant] is the lawful owner of the unit, that the Board has no ownership interest in the Unit; that [the Tenant] is the lawful lessee of the Unit, that pursuant to zoning laws, the Unit may be used as a child care facility and that the Board's consent to lawful alterations in the Unit is unnecessary; and

WHEREAS, the Appellant contends that Justice Edmead determined that based on the governing documents of the condominium that the Appellant is the owner for purposes of AC § 28-104.8.2 and the Board's signature was not required; and

WHEREAS, in response, DOB asserts that AC § 28-104.8.2 requires the Managers' authorization based on (1) statutory interpretation principles and (2) DOB precedent, and that the Board's review in the subject appeal should be limited to this subject matter; and

WHEREAS, as to statutory interpretation, DOB disagrees with the Appellant that the AC allows for either the "owner" or the "condominium owner's association" to authorize the application; and

WHEREAS, specifically, DOB disagrees that the disjunctive "or" reflects that there is an option other than having the Managers' authorization; and

WHEREAS, instead, DOB asserts that the Building Code, when read as a whole, compels a different interpretation; and

WHEREAS, DOB cites to AC § 28-101.5 and the definition of "Owner" as "any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises" and finds that a broad reading of "owner" would then allow for a mortgagee or remainderman to authorize an application at DOB, pursuant to AC § 28-104.8.2; and

WHEREAS, DOB finds the broad reading to lead to an absurd result and, instead, argues that AC § 28-104.8.2 be read in light of its purpose to (1) reference the three predominant forms of real estate ownership in New York City and (2) to establish who must authorize work; and

WHEREAS, DOB asserts that the three entities – owner, condominium association, and cooperative corporation - represent the three common ways a building's ownership is organized; and

WHEREAS, specifically, DOB states that (1) for a building owned by a fee owner, only the owner must authorize the application, and (2) for a building that is established as a condominium or as a cooperative, the condominium owners' association or cooperative owners' corporation, respectively, must authorize the work; and

WHEREAS, DOB concludes that because the Building is organized as a condominium, the condominium owners' association must authorize the work; and

WHEREAS, as to precedent, DOB states that it relies on its well-established requirement for condominium board authorization, which it states has withstood administrative and judicial scrutiny; and

WHEREAS, further, DOB cites to AC § 27-140 in the 1968 Building Code, which required ". . . a signed statement of the owner, condominium board of managers or cooperative board stating that the applicant is authorized to make the application" and the 1938 Code, which required ". . . a statement . . . describing the proposed work. . . accompanied by a further statement in writing . . . giving the full name and

residence of each of the owners of the structure, proposed structure or premises" (Code 26-161.0); and

WHEREAS, thus, DOB contends that even before the advent of condominium ownership, DOB required all parties with an ownership stake to authorize work; and

WHEREAS, DOB asserts that the requirement for the Managers, who represent and speak on behalf of the Building's multiple owners, to authorize the applications follows a 70-year-old policy to require authorization from all owners; and

WHEREAS, DOB cites to two prior BSA cases to support its interpretation of the 1968 provision; in BSA Cal Nos. 1048-86-A and 480-83-A, the Board determined that DOB may properly revoke permits when a landlord-tenant dispute calls into question whether an applicant has authorization; and

WHEREAS, DOB notes that the Appellate Division upheld BSA's determination in BSA Cal. No. 480-83-A at Bun & Burger of Rockefeller Plaza v. City of New York, 489 N.Y.S.2d 517 (DOB acted properly in revoking permit when fee owner objected to net lessee's application for permit); Bun & Burger will be discussed in more detail below; and

WHEREAS, DOB adds that its policy on owner's authorization is set forth in DOB Operational Policy and Procedure Notice #17/1987, which states that a condominium association must authorize an application by a unit owner; and

WHEREAS, finally, DOB asserts that the policy of requiring a condominium board's signature makes practical sense because it serves to acknowledge three facts: (1) any work on a condominium unit has the potential to legally and physically affect all other units in the building; (2) condominium agreements vary; and (3) DOB does not possess the jurisdiction to apply the law or expertise to interpret a condominium agreement; and

WHEREAS, DOB states that its policy avoids the requirement that it determine on a case-by-case basis which unit owners could file and which could not and which boards could object to unit filings and which could not, which would result in an untenable position creating uncertainty and undue burdens on all parties; and

WHEREAS, the Board finds that New York State courts support the conclusion that a government agency is not required to enforce a private agreement, which may conflict with its own ordinance, and finds that the case law does not prohibit an agency from considering a private agreement, but it does not require the agency to enforce it; and

WHEREAS, the Board cites to Friends of Shawangunks v. Knowlon, in which the court states that an agency is not required to consider a private agreement in the context of a government approval because a zoning ordinance "is a legislative enactment and the easement or covenant a matter of private agreements" 64 N.Y. 2d 387, 392 (1985) See also Isenbarth v. Barnett, 206 A.D. 546 (N.Y. App. Div. 2d Dep't 1923); and

WHEREAS, the Board notes that the rule cited in Friends of Shawangunks, which distinguishes a governmental ordinance from a private real property agreement, has been applied in cases involving the Board See Lacitra v. Foley, 20 Misc.2d 922 (N.Y. Sup. Ct. Bronx Co. 1959), Gersten v. Cullen, 203 A.D.2d 744 (N.Y. App. Div. 3d Dep't 1994), Nemet v. Edgemere Garage & Sales Co., 73 N.Y.S.2d 921 (N.Y. Sup. Ct. Queens Co. 1947); and

WHEREAS, accordingly, the Board does not find that there is any practical or legal requirement that DOB contemplate private agreements when seeking authorization for the purposes of AC § 28-104.8.2, nor is there a basis to require DOB to follow another forum's determination based in part on its reading of a private agreement and in part on its interpretation of the AC, when it is not a party to the action; and

WHEREAS, the Board recognizes that DOB is a land use agency with a mandate to insure construction safety, which may be distinctly different from a mandate set forth within a condominium's offering plan and by-laws; thus, the rights that DOB seeks to protect through its AC are not meant to be made in consultation with the terms of private agreements; and

WHEREAS, the Board concludes that, just as DOB is not required to resort to or rely on private agreements, which come in many forms and may be difficult to interpret, it should not be required to interpret court orders which, similarly, may not clearly set forth the court's direction, when DOB is not a party; and

WHEREAS, the Board, thus, finds that Justice Edmead's order, that the Appellant (an individual condominium unit owner) may authorize the DOB applications, rather than the Managers (the condominium association), reflects a waiver of the AC since the AC requires that the Managers must authorize the applications; and

WHEREAS, the Board recognizes that DOB does not have the ability to waive the AC and nor does the Board, within the context of the subject appeal; therefore, among the reasons that the Board finds that DOB cannot act on Justice Edmead's determination that the Managers' authorization is not required, is the fact that it would result in DOB exceeding its authority by waiving a provision of the AC; and

B. The Bun & Burger Decision

WHEREAS, DOB introduced a prior BSA case (BSA Cal. No. 480-83-A [16 West 48th Street, Manhattan] and the associated Article 78 proceeding, Bun & Burger), which concerned DOB's revocation of permits issued to a net lessee after the building's owner complained that the net lessee lacked its authorization to obtain a permit, in support of DOB's position that the court is the appropriate venue for resolving disputes between parties who assert ownership rights; and

WHEREAS, the Board notes that after DOB revoked the permits, which led to the appeal at the center of Bun & Burger, the lessee initially went directly to court with an Article 78 proceeding to seek the reinstatement of the permits, which was dismissed for failure to exhaust administrative remedies and, thus, the net lessee filed an appeal before the Board to review DOB's Code interpretation; and

WHEREAS, ultimately, the Board upheld DOB's interpretation and the lessee subsequently filed an Article 78

proceeding against DOB and the Board; the Supreme Court upheld the Board's decision that DOB's interpretation of "owner" under the Code, finding it was reasonable; and

WHEREAS, the Supreme Court added that "[t]he purpose of the Board of Standards and Appeals is to protect the public, not resolve landlord-tenant disputes" Bun & Burger v. City of New York, Index No. 2880/84 (Blyn, J.); and

WHEREAS, the Appellate Division, First Department sustained, agreeing that DOB and the Board had "correctly construed" the AC and were not arbitrary or capricious in revoking the net lessee's application absent the fee owner's authorization; and

WHEREAS, the Appellant has asserted that Bun & Burger is analogous to the subject case and that Bun & Burger requires DOB to follow a court's determination, which resolves a dispute between parties regarding owner's authorization; and

WHEREAS, DOB distinguishes Bun & Burger by considering the differences between the rolls of parties under a lease in which a lessee acts as an owner with similar rights and obligations as opposed to a condominium owner who has markedly different rights and obligations than those of a condominium association including that a unit owner is only responsible for part of a building whereas the association is responsible for the entire building; and

WHEREAS, DOB submitted departmental memoranda which reflect a consideration that there may be circumstances where a net lessee, with authorization from the owner, could file an application; however, DOB maintains that a condominium unit owner could never replace a condominium association; the condominium association is always required, regardless of whether a private agreement requires such authorization; and

WHEREAS, DOB asserts that Bun & Burger should not be applied to eliminate the authorization requirement set forth at AC § 28-104.8.2 other than for the principle that the court is the appropriate forum for resolving disputes between parties about private agreements which set forth property rights; and

WHEREAS, DOB concludes that the rule in Bun & Burger is that where there is a dispute between a condominium unit owner and a condominium association, a court must determine that the condominium association, through its condominium plan and by-laws, conferred the legal right to undertake alterations upon the condominium unit owners and thus the condominium association must authorize the application; and

WHEREAS, the Appellant asserts that Bun & Burger requires that the court determine which party may authorize DOB applications and that DOB is held to that determination; and

WHEREAS, the Appellant contends that, although the form of the contracts in Bun & Burger and the subject case is different, the principle is the same: that when there is a dispute, the answer to who qualifies as "owner" under the statute must be determined by the courts based on a reading of the statute with the contract; and

WHEREAS, the Board disagrees with the Appellant and finds that the question in Bun & Burger was whether a broad reading of "owner" and a grant of authorization outside of the scope of the application could allow a net lessee to stand in the shoes of the fee owner and file the application without additional authorization, and that the question in the subject appeal is whether the statute reflects the requirement that all applications submitted by condominium unit owners include authorization from the condominium association; in the subject appeal, there is no dispute about who the owner is, but rather whether a condominium unit owner as "owner" is a substitute for the "condominium association," cited as required authorization in AC § 28-104.8.2; and

WHEREAS, further, the Board notes that in Bun & Burger, there was a question about whether or not the fee owner had authorized the work because, DOB accepted the applicant's representation that the owner had authorized the application; but, here, as reflected on the DOB application, the condominium unit owner must identify Condominium Unit as the type of ownership and include the condominium association's authorization directly on the application, which was not done; and

WHEREAS, the Board notes that in Bun & Burger, there was no question about one entity fitting one definition of a required party and another entity fitting another definition; rather, the case was about both entities vying for the same title as owner under a broad reading of the definition of owner (which includes "control of property") and authorization (under the lease rather than under an individual application); and

WHEREAS, DOB practice acknowledges that at the time of the Bun & Burger decision, it memorialized its policy by departmental memoranda, which includes allowing lessees to provide notarized statements that they have owner's authorization; the Board notes that no such exception exists for condominium unit owners, as condominium associations are clearly identified on the application form; and

WHEREAS, in the subject case, the Board notes that the Appellant claims to be "the owner" – one party named in AC § 28-104.8.2 and the Managers claim to be "the condominium owners' association" – another party named in the section; thus, the issue here is DOB's longstanding interpretation of the AC to require the condominium association's authorization; and

WHEREAS, the Board distinguishes Bun & Burger because DOB does not require the resolution of a dispute between the parties to read the section in conformance with its longstanding interpretation of "owner" – a fee owner of an individual building and "condominium owners' association" - the representative body for any and all condominium unit owners in a condominium building; and

WHEREAS, the Board notes that DOB disagrees with the meaning of "owner" proffered by the Appellant; DOB accepts that the Appellant is an owner, just not the right kind of owner – one in a non-condominium building; thus, because all parties agree that the ownership structure is a condominium and DOB has interpreted that only one signator is listed for authorization purposes of such ownership structure under the

section, the condominium association's authorization is required; and

WHEREAS, the Board notes that private contracts may allow for the condominium unit owner/Appellant to file at DOB, but a private contract cannot disturb or overwrite the AC, which requires the Managers' authorization; and

WHEREAS, additionally, the Board does not find that Justice Edmead or the court in Bun & Burger holds that DOB must redefine the AC based on the terms of a private agreement; and

WHEREAS, finally, the Board notes that the court in Bun & Burger upheld DOB and the Board's statutory interpretation that the lessee was not the owner under the Code and sustained its rejection of the lessee's application in the absence of the fee owner's authorization and the Board notes that the Appellant's suggestion that Bun & Burger requires DOB and the Board to follow a court's determination of ownership relies on *dicta* and thus is not binding precedent; and

WHEREAS, the Board finds that in the subject case, DOB has made a statutory interpretation that the Appellant, itself, cannot provide the required authorization under the Code and, as in Bun & Burger, the parties must adjudicate until DOB obtains the required authorization from the condominium association, which is the only permitted authorization within the context of the subject statute; and

C. The Effect of Prior Related Litigation on the Question of Owner's Authorization

WHEREAS, additionally, the Appellant asserts three arguments about the effect of the related litigation on the question of the Managers' authorization and DOB's position that Justice Edmead's decision is not binding on it: (1) DOB is collaterally stopped from re-litigating the issue of whether the Managers' approval is required; (2) a collateral attack on the Court's orders is not permissible under the law; and (3) the law of the case must be enforced; and

WHEREAS, the portion of Justice Edmead's decision which is at issue within the context of this appeal is her determination that the Managers' authorization is not required for DOB applications, pursuant to AC § 28-104.8.2; and

WHEREAS, Justice Edmead states: "In this case, the statute permits either the owner or the condominium association to sign the application. In order to determine which signature is required on an individual application, one must read the condominium plan and by-laws in conjunction with the regulation;" and

WHEREAS, the Appellant asserts that the doctrine of collateral estoppel precludes DOB from arguing the issue of owner's authorization before the Board because (1) the issue was raised in a prior action or proceeding decided against it, (2) the issues are identical, (3) the issue was decided in the first action, and (4) the parties had a full and fair opportunity to litigate the issue in the earlier action, citing to Ryan v. New York Tel. Co., 62 N.Y.2d 494 (1984) and Sam v. Metro-North Commuter Railroad, 287 A.D. 2d 378 (1st Dept. 2001); and

WHEREAS, specifically, the Appellant asserts that DOB had an opportunity to litigate the issue and that DOB cannot collaterally attack the Court's rulings, and that DOB must follow the Court's determination because it is the "law of the case" which is the doctrine requiring a lower court, on remand, to follow the mandate of the higher court, citing to People v. Evans, 94 N.Y.2d 499, 504 (2000); and

WHEREAS, DOB asserts that Justice Edmead's decision does not have any bearing on DOB's determination regarding the interpretation of AC § 28-104.8.2; and

WHEREAS, DOB asserts that the Appellant's arguments regarding DOB's duties or obligations with respect to Justice Edmead's order, which does not name DOB, are not within the jurisdiction of the Board and that only the question of DOB's interpretation of AC § 28-104.8.2 is before it; and

WHEREAS, DOB disagrees with the Appellant about whether Justice Edmead decided on February 22, 2010 in Ariza, LLC v. City of New York, Index No. 105548/09 that DOB must accept permit applications from the Appellant without the Managers' authorization; and

WHEREAS, DOB notes that the doctrine of collateral estoppel precludes a party from re-litigating in a subsequent action or proceeding, an issue clearly raised in a prior action or proceeding and decided against the party, provided (1) the issues are identical, (2) the issue was necessarily decided in the first action, and (3) the parties had a full and fair opportunity to litigate the issue in the earlier action; and

WHEREAS, DOB asserts that the question of whether it has the authority under AC § 28-104.8.2 to require a condominium board to sign an application for work was not "clearly raised" and "decided against" DOB because DOB had already been dismissed from the declaratory judgment action when Justice Edmead determined that "[t]he (Condo) Board's consent to lawful alterations in [Appellant's Unit] is unnecessary;" and

WHEREAS, further, DOB states that Justice Edmead may have decided the meaning of the Building's offering plan, but such decision does not compel DOB to modify its interpretation of AC § 28-104.8.2 and, accordingly, DOB is not required to accept an application from any party, without authorization from the Managers; and

WHEREAS, DOB asserts that the issues – the subject of the Article 78 proceeding and of the subject appeal – are not identical because the court "read the condominium plan and by-laws in conjunction with the regulation" whereas the Board's review in the subject appeal is limited to the interpretation of AC § 28-104.8.2 pursuant to its Charter Authority; and

WHEREAS, DOB also asserts that it did not have a full and fair opportunity to litigate the issue because the subject matter of AC § 28-104.8.2 would have required an appeal to the Board, as was held in Matter or Ariza, d/b/a Early Days Childcare Center and N&J Associates, LLC v. The City of New York, Index No. 105546/09 (M. Friedman, J.) and Ariza, LLC v. City of New York, Index No. 105548/09 (E. Rakower, J.) and then, if necessary, an Article 78 proceeding; and

WHEREAS, DOB asserts that a full and fair opportunity

presumes that all parties litigating are properly before the reviewing tribunal, which was not the case in the two Ariza cases because administrative remedies against DOB had not yet been exhausted; and

WHEREAS, the Board agrees with DOB that the matter before it is whether DOB appropriately interpreted AC § 28-104.8.2 and it refrains from taking a position on the host of arguments concerning the litigation process except that (1) it concurs with Justice Friedman's Decision that the interpretation of the AC was not ripe for review by the court until the matter had been reviewed by the Board, pursuant to the exhaustion of remedies doctrine and (2) accordingly, that Justice Edmead's holding, in so much as it includes an interpretation of the AC, is not binding on DOB; and

WHEREAS, since the Board's authority to review DOB's interpretation of the AC is distinct from the court's authority, the Board does not find that the "law of the case" doctrine is applicable; and

WHEREAS, therefore, the Board rejects the Appellant's argument that DOB is collaterally estopped, that there is a collateral attack on the court, or that there is a "law of the case" to apply; and

THE BOARD OF MANAGERS' POSITION

WHEREAS, the Board of Managers, who agree with DOB's interpretation of the code and support DOB's determination to deny reinstatement of the approvals, assert the following arguments: (1) the proposed daycare use is unlawful as the space does not comply with the Multiple Dwelling Law; (2) Judge Edmead did not have the authority to act on the dispute with DOB regarding the interpretation of AC § 28-104.8.2 absent the exhaustion of administrative remedies; (3) DOB was not a party to the action at the time of Justice Edmead's decision and thus had no opportunity to litigate the issue; (4) the conditions that are required for collateral estoppel are not present; (5) the Board and DOB are not bound by Justice Edmead's decision; (6) Justice Edmead did not consider the legality of the proposed use of the Unit; (7) Justice Edmead did not direct DOB to accept the Appellant's signature; and (8) Bun & Burger is not applicable because the facts are different in that there is not a lease between the parties; and

WHEREAS, the Managers argue that the proposed use of the Unit as a daycare center is unlawful and, thus, by the terms of the Building's by-laws and offering plan, they are not required to provide authorization; and

WHEREAS, the Managers request that DOB and the Board inspect the Unit to determine whether it complies with egress requirements, since the permit was submitted under the self-certification process; and

WHEREAS, the Managers assert that the Building Code is not subject to a governing document of any housing association and that the intention of the Building Code is not to provide more entities with the right to authorize applications to DOB, but to limit the number of entities with the power to authorize submissions, following the decision in Bun & Burger; the Managers state that the court's decision provided that no owner of a unit within a building could undertake irreversible waste to the detriment of the entire building; and

WHEREAS, in response to the Managers' opposition, the Appellant states that the issue before the Board is whether DOB must follow Justice Edmead's order and also notes that the Managers' invocation of safety concerns is misplaced because (1) Justice Edmead determined that the Unit may be used for the proposed use and (2) DOB has determined that all technical issues have been cured; and

WHEREAS, the Appellant also rejects the Managers' claims that Bun & Burger is inapplicable because the Appellant's proposed use of the space is unlawful; and

WHEREAS, as to the Managers' supplementary arguments not discussed earlier, the Board notes that the appeal is brought by the Appellant and concerns the question of whether the condominium owners' assocation's authorization is required; no issues related to fire safety, zoning, or anything else related to the proposed use of the space is before the Board; and

CONCLUSION

WHEREAS, the Board agrees with DOB's statutory interpretation that the "owner" identified in AC § 28-104.8.2 is an owner of a building, not a condominium unit owner as condominiums and cooperatives are addressed by the identification of their boards; the Board agrees that the spirit of the text is to seek authorization from someone representing the entire building, as the entire building may be affected when work is proposed anywhere within it; an owner, simply, is the authority for his own (or his co-owners') building, a condominium association is the authority for the entire condominium building, and the cooperative corporation is the authority for a cooperative building; and

WHEREAS, the Board also agrees with DOB that it would be untenable and lead to inconsistent results if DOB were to sometimes accept a condominium unit owner's authorization and sometimes require the condominium association's authorization and recognizes that DOB has a long-standing sound policy and practice in interpreting and enforcing AC § 28-104.8.2 to require authorization from the condominium association; and

WHEREAS, the Board agrees with DOB's position about seeking authorization from a representative of an entire condominium building and fails to see any logic in allowing for the choice between a condominium unit owner or the condominium association, finding it difficult to imagine a situation in which a condominium unit owner would opt to seek out the condominium association's authorization rather than simply providing its own authorization directly to DOB; and

WHEREAS, finally, the Board recognizes that DOB's policy for requiring the condominium association's authorization is rooted in practical public policy concerns about construction practices and safety, while a condominium's private agreement as set forth in its by-laws and offering plan addresses a different set of individual property interests other than technical construction matters, which are implicated when an owner of a portion of a building with multiple owners seeks

to make changes that require DOB approval; and

WHEREAS, therefore, the Board accepts DOB's policy and reasoning for requiring condominium association authorization for applications involving condominium units even when it conflicts with the rights set forth in a private condominium agreement; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated June 29, 2010, determining that the Managers' authorization is required for the noted approvals, is hereby denied.

Adopted by the Board of Standards and Appeals, December 7, 2010.

136-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard Duenia, lessee.

SUBJECT – Application August 3, 2010 – Proposed reconstruction and enlargement of a single family dwelling in the bed of a mapped street, contrary to General City Law Section 35, and upgrade of private disposal system within the bed of a private service road, contrary to Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 26 Park End Terrace, east side of Rockaway Point, 20.21 south of mapped Bayside Drive, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 27, 2010, acting on Department of Buildings Application No. 420126508, reads in pertinent part:

"A1 – The site and building are located in the bed of a mapped street therefore, no permit or Certificate of Occupancy can be issued as per Art 3. Sect 35 of the General City Law; and

A2 – The private disposal system is in the bed of the service lane contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on December 7, 2010 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letters dated October 27, 2010 and November 15, 2010, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 2, 2010, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated December 2, 2010, the Department of Transportation states that it has no objection to the subject proposal; 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 July 27, 2010, acting on Department of Buildings Application No. 420126508, 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 August 5, 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, December 7, 2010.

274-09-A

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

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

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

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Joel A. Miele Sr.

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 January 11, 2011, at 10 A.M., for decision, hearing closed.

123-10-A & 124-10-A
APPLICANT – Fire Department of the city of New York
OWNER – DiLorenzo Realty Corporation
LESSESS – Flair Display Incorporated
SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.
PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lot 60, 62 Borough of the Bronx.
COMMUNITY BOARD #12BX
APPEARANCES –
For Applicant: Anthony Scaduto, Fire Department.
For Opposition: Joel.
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 January 11, 2011, at 10 A.M., for decision, hearing closed.

153-10-A
APPLICANT – Eric Palatnik, P.C., for 101 01 One Group LLC, owner.
SUBJECT – Application August 19, 2010 – Proposed construction of a three story, five family residential building located within the bed of a mapped street (101st Street), contrary to General City Law Section 35. R5 Zoning District.
PREMISES AFFECTED – 101-01 39th Avenue, between 101st Street and 102nd Street, Block 1767, Lot 59, Borough of Queens.
COMMUNITY BOARD #3Q
APPEARANCES –
For Applicant: Eric Palatnik.
For Administration: Anthony Scaduto, Fire Department.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 11, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 7, 2010
1:30 P.M.

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

ZONING CALENDAR

305-09-BZ
APPLICANT – Davidoff Malito & Hutcher, LLP, for South Queens Boys & Girls Club, Inc., owner.
SUBJECT – Application November 5, 2009 – Variance (§72-21) to permit the enlargement of an existing community facility building (*South Queens Boys & Girls Club*) contrary to floor area (§33-121) and height (§33-431). C2-2/R5 zoning district.
PREMISES AFFECTED – 110-04 Atlantic Avenue, southeast corner of Atlantic Avenue and 110th Street, Block 9396, Lot 1, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Ron Mandell.
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 October 6, 2009, acting on Department of Buildings Application No. 410004953, reads in pertinent part:

> "Proposed enlargement to community facility building in C2-2/R5 zoning district is contrary to the following Zoning Resolution Sections:
> Zoning Resolution Section 33-121 regarding community facility floor area ratio;
> Zoning Resolution Section 33-431 regarding wall height;
> Zoning Resolution Section 33-431 regarding sky exposure plane;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C2-2 (R5) zoning district, an enlargement to an existing community facility building, which does not comply with floor area, wall height, and sky exposure plane regulations, contrary to ZR §§ 33-121 and 33-431; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010, November 23, 2010, and then to decision on December 7, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair

Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, City Council Member Eric Ulrich recommends approval of this application; and

WHEREAS, New York State Senator Joseph P. Addabbo, Jr., provided testimony in support of this application; and

WHEREAS, New York State Assembly Member Michael G. Miller provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of the South Queens Boys & Girls Club (the "Boys & Girls Club"), a nonprofit institution; and

WHEREAS, the site is located on the southeast corner of Atlantic Avenue and 110th Street; and

WHEREAS, the site has 150 feet of frontage along Atlantic Avenue and 100 feet of frontage along 110th Street, with a lot area of approximately 15,000 sq. ft.; and

WHEREAS, the site is occupied by an "L"-shaped two-story building with a mezzanine and penthouse; and

WHEREAS, the building was built in 1928 and last altered in the early 1970s; and

WHEREAS, the Boys & Girls Club occupies the entire two-story building for community facility (Use Group 4) purposes; and

WHEREAS, the building has a floor area of approximately 24,151 sq. ft. (1.61 FAR); and

WHEREAS, the applicant states that the western portion of the building has a legal non-complying wall height of approximately 41'-0"; and

WHEREAS, the building is currently occupied as follows: (1) the cellar - an exercise room, after school/senior center, computer room, kitchen and accessory storage and mechanical space; (2) the first floor – a pre-teen center, art and crafts room, computer rooms, library, office space, wood shop, and accessory storage; (3) the second floor – a teen center, conference room, gymnasium/performing arts space, and accessory storage; (4) the third floor – a project room, office, and accessory storage; and (5) the penthouse – a caretaker's apartment; and

WHEREAS, the applicant states that there was formerly another building occupied by a pool on the now vacant 48'-0" by 95'-0" portion of the lot, which has been demolished; and

WHEREAS, the applicant now proposes to enlarge and renovate the existing building, which includes the demolition of the eastern portion of the building and the construction of a three-story portion on the remainder of the lot to align with the western portion of the existing building; and

WHEREAS, the applicant proposes the following non-complying conditions: (1) an increase in the floor area from the existing 24,151 sq. ft. (1.61 FAR) to 34,560 sq. ft. (2.3 FAR) (30,000 sq. ft. [2.0 FAR] is the maximum permitted); (2) a front wall height of 45'-0" (a maximum front wall height of 35'-0" is permitted); and (3) encroachment into the sky exposure plane; and

WHEREAS, the applicant initially proposed to construct a building with a floor area of 37,488 sq. ft. (2.5 FAR) and, at the Board's direction, the applicant revised its plans to reduce the floor area waiver, resulting in the current proposal; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Boys & Girls Club; (2) the constraints of the existing building; and (3) the subsurface conditions at the site; and

WHEREAS, the applicant states that the existing building lacks sufficient space to accommodate the programming of the Boys and Girls Club, which includes education, physical education, technology education, youth development, and social recreation; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Boys & Girls Club which require the requested waivers: (1) a need to accommodate a regulation size basketball court; (2) a need to accommodate an increase in attendance; (3) a need to separate different age groups of attendees; and (4) a need to provide adequate administrative space; and

WHEREAS, as to the need to expand and enlarge the activity space, the applicant represents that the creation of a regulation size basketball court will make possible a complete physical education program for the members of the Boys & Girls Club; and

WHEREAS, specifically, the applicant states that the new gymnasium space will allow proper instruction and competition in a full array of sports activities, provide separate locker room facilities, accommodate roll-out bleacher seats, and allow the existing combined gymnasium/performing arts space to function more appropriately for instruction in the performing arts; and

WHEREAS, the applicant states that the requested floor area waiver is necessary to alleviate the space constraints of the existing building, and the requested wall height and sky exposure plane waivers are required in order for the reconstructed eastern portion of the building to align with the western portion of the building, thereby extending the existing legal non-complying street wall further west along Atlantic Avenue; and

WHEREAS, as to attendance, the applicant states that the Boys & Girls Club currently has approximately 235 members, and the proposal will allow it to increase its membership and accommodate 325 members daily; and

WHEREAS, the applicant further states that the requested waivers will alleviate the need to schedule incompatible activities in the same program rooms involving different age groups due to the lack of program space at the existing facility; and

WHEREAS, the applicant states that the current situation, in which various age groups are located in the same space, is inappropriate for educational, childhood development, and safety reasons; and

WHEREAS, the applicant represents that the proposal will allow members to be properly assigned to groups based

on their age, school grade or academic abilities, and enable each group to be assigned to a different portion of the building and rotate throughout the facility hourly to ensure that they have the opportunity to participate in each planned activity; and

WHEREAS, the applicant states that the proposed enlargement will also allow the Boys & Girls Club to improve its administrative facilities, which currently do not provide program directors with adequate space to conduct confidential discussions and carry out the daily conduct of business activities; and

WHEREAS, the applicant further states that the proposal will provide necessary office space for administrative personnel and a conference room to accommodate staff and parent meetings; and

WHEREAS, the applicant further states that the programmatic needs cannot be accommodated within a conforming development based on the unique conditions on the lot, including (1) the constraints of the existing building and (2) the subsurface conditions; and

WHEREAS, as to the constraints of the existing building, the applicant states that the building was constructed more than 80 years ago for use by the Knights of Columbus and has been subject to various alterations, including the adaptation of the building for use as a printing factory, which have left the existing building functionally obsolete for use by the Boys & Girls Club; and

WHEREAS, the constraints of the existing building include the inefficient floor plates and layout, resulting from the construction and adaption of the building for different uses, and the inability to demolish the entire existing building and construct a new building; and

WHEREAS, the applicant states that the configuration of the existing two-story and mezzanine community facility building resembles an odd "L"-shape, and the resulting inefficient floor plates and layout create space constraints for which the requested waivers are necessary to provide relief; and

WHEREAS, specifically, the applicant states that the existing building (1) lacks traditional classrooms such that many educational programs typically take place in open spaces that are inappropriate and inadequate for a proper learning environment; (2) is designed similar to a "railroad apartment," such that attendees often must pass through various rooms in order to reach their destination; and (3) combines the gymnasium with a performing arts center that has a large fixed stage for performing arts activities, rendering the space inadequate as a gymnasium; and

WHEREAS, the applicant represents that it is impractical and economically infeasible to demolish and reconstruct the entire building due to the need to keep the programs at the Boys & Girls Club in continuous operation; and

WHEREAS, the applicant represents that, while it may be able to demolish a portion of the building and construct an enlargement that would conform to the underlying zoning district, the resulting building would not meet their programmatic needs; and

WHEREAS, as to the subsurface conditions, the applicant states that the soil conditions on the site are not suitable for development due to its low bearing capacity; and

WHEREAS, the applicant further states that it examined various development alternatives, including the option of placing the required program and ancillary space below grade so as not to trigger the proposed floor area non-compliance; and

WHEREAS, the applicant submitted a geotechnical report and a letter from its construction consultant stating that constructing a sub-cellar level to accommodate the proposed development is infeasible because it would require a complex and cost prohibitive foundation system; and

WHEREAS, the Board notes that the applicant also asserts that the Boys and Girls Club is an educational institution, and as such is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application, pursuant to Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986); and

WHEREAS, the Board finds that the applicant did not submit sufficient evidence into the record to establish that the Boys and Girls Club is an educational institution as contemplated by the courts, and as such, it cannot rely solely on the programmatic needs of the Boys and Girls Club to support the subject variance application; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the soil conditions, when considered in conjunction with the programmatic needs of the Boys & Girls Club, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Boys & Girls Club is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the surrounding area is characterized by a mix of residential and commercial uses and that the community facility use is as of right; and

WHEREAS, the applicant asserts that the proposed building is compatible with the context of the immediate area, which is occupied by residential buildings, garages, automobile sales yards, restaurants and catering halls, and local retail; and

WHEREAS, the applicant notes that the Boys & Girls Club has existed at the subject site since 1976 and that the building's proposed non-complying height will match the existing non-complying height; and

WHEREAS, as to bulk, the applicant states that the proposed building height and bulk are compatible with the

surrounding neighborhood; and

WHEREAS, specifically, the applicant states that there is a catering hall located directly across 111th Street which is compatible in height with the proposed building, and submitted a 400-ft. radius diagram reflecting that there is a three-story building located directly across Atlantic Avenue from the subject site; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Boys & Girls Club could occur on the existing lot; and

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

WHEREAS, as noted above, the applicant initially proposed to construct a building with a floor area of 37,488 sq. ft. (2.5 FAR); and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting the current proposal, with a floor area of 34,560 sq. ft. (2.3 FAR); and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Boys & Girls Club to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA030Q, dated May 18, 2010; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, within a C2-2 (R5) zoning district, an enlargement to an existing community facility building, which does not comply with FAR, wall height and sky exposure plane regulations, contrary to ZR §§ 33-121 and 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 12, 2010"- nine (9) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 34,560 sq. ft. (2.3 FAR) and the front wall height shall not exceed 45'-0", as illustrated on the BSA-approved plans;

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

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, December 7, 2010.

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.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 20, 2010, acting on Department of Buildings Application No. 120290489, reads in pertinent part:

"Proposed commercial use (Use Group 6) in M1-5B zoning district below the level of the second story in an M1-5B zoning district is not permitted pursuant to ZR 42-14(D)(2)(b) of the Zoning Resolution"; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district, the conversion of the first floor of an existing seven-story mixed-use commercial/residential building to an eating and drinking establishment (UG 6), with accessory storage at the cellar level, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on August 17, 2010, after due notice by publication in the *City Record*, with continued hearings on October 5, 2010 and November 9, 2010, and then to decision on December 7, 2010; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, with the following conditions: (1) maximum capacity does not exceed 200 persons; (2) the hours of operation be limited to Sunday through Thursday, from 11:30 a.m. to 12:30 a.m., and Friday and Saturday, from 11:30 a.m. to 1:30 a.m.; (3) no sound system or music of any kind is permitted in the exterior space; (4) the applicant comply with relevant NYC codes and requirements if heated lamps are used in the exterior space; (5) umbrellas are provided in the exterior space to reduce noise; (6) the exterior space is closed at 12:00 a.m. daily; (7) no catered or private events are allowed in the exterior space; (8) there is no bar in the exterior space; and (9) the existing perimeter wall around the exterior space be retained; and

WHEREAS, the subject site is located on the northeast corner of Thompson Street and Broome Street, within an M1-5B zoning district; and

WHEREAS, the site has 106 feet of frontage along Thompson Street, 40 feet of frontage along Broome Street, and a lot area of 7,276 sq. ft.; and

WHEREAS, the site is currently occupied with a seven-story mixed-use building with an unoccupied gymnasium at the first floor (UG 9), office use on the second floor through fifth floor, and joint living and work quarters for artists ("JLWQA") on the sixth and seventh floor; and

WHEREAS, the applicant proposes to convert the first floor into an eating and drinking establishment (UG 6) with accessory storage in the cellar; and

WHEREAS, the uses on the upper floors will not change and are not included in the proposal; and

WHEREAS, because a Use Group 6 eating and drinking establishment is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance to permit the proposed conversion of the first floor and cellar level; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the existing building is obsolete for manufacturing use; and (2) the surrounding traffic and parking conditions preclude a manufacturing use at the site; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) the existing building is underbuilt with floor plates too small to support a conforming manufacturing use; (2) the existing structural elements of the building cannot support a conforming manufacturing use; and (3) there is no loading dock or space to install one; and

WHEREAS, the applicant states that although the zoning lot is 7,276 sq. ft., it has an "L"-shaped configuration and the footprint of the building is limited to 5,031 sq. ft.; and

WHEREAS, further, the ground floor provides only 3,640 sq. ft. of useable floor area for manufacturing use, making it undersized for such a conforming use; and

WHEREAS, the applicant submitted an area survey reflecting that of the 250 lots with an area of 5,000 sq. ft. or greater in Community Districts 2 and 3, only nine of the lots, or 3.6 percent, are occupied by conforming manufacturing uses, and only four such lots contain buildings with floor plates less than 5,000 sq. ft.; and

WHEREAS, the area survey submitted by the applicant further reflects that of the four lots occupied by conforming manufacturing uses with a floor plate less than 5,000 sq. ft. in the study area, two such sites are accessory attendant booths for outdoor parking and one is a convenience store for a gasoline service station; and

WHEREAS, the applicant represents that, based on the findings of the area study, the small size of the floor plate at the first floor of the site is unique in the surrounding area and creates a hardship in providing a conforming use at the first floor; and

WHEREAS, the applicant also performed a structural examination of the building, and represents that this also establishes that conforming manufacturing use is not feasible; and

WHEREAS, specifically, the applicant submitted a floor vibration analysis performed by an engineering consultant, which studied the vibrations that would be caused by (1) a light industrial use with machinery-induced vibration at the first floor, and (2) the proposed restaurant use with human-induced vibration at the first floor; and

WHEREAS, the vibration analysis submitted by the applicant indicates that the use of the first floor for light manufacturing use would cause vibrations to exceed the standard acceleration criteria, while the vibrations caused by the proposed first floor use as a restaurant would fall below the standard acceleration criteria; and

WHEREAS, at the Board's direction, the applicant's engineering consultant conducted a further study examining the vibrations that would be caused at the upper floors; specifically at the sixth floor, where the JLWQA use is located; and

WHEREAS, the updated study submitted by the applicant indicated that use of the first floor for conforming manufacturing use would cause vibrations at the sixth floor, which contains JLWQA use, that would be double of what is

considered the upper limit of acceptable acceleration, and would therefore result in vibrations permeating the entire building, effecting both the commercial office occupants on the second through fifth floors and the JLWQA tenants in the sixth and seventh floors; and

WHEREAS, accordingly, the applicant states that a conforming manufacturing use utilizing standard industry equipment is not feasible at the subject site, given the existing structural elements of the building coupled with the existing uses within the building; and

WHEREAS, the applicant states that the obsolescence of the existing building also stems from the absence of a loading dock and the inability to install one; and

WHEREAS, the applicant submitted letters from its architect and engineer regarding the inability to install a loading berth at the site; and

WHEREAS, the letters from the architect and engineer state that a loading berth cannot be provided at the site because, pursuant to ZR § 44-582, loading berths cannot be installed less than 50 feet from the intersection of two street lines, and because the building lacks the necessary dimensions for a loading berth, specifically with regards to the ZR § 44-581 requirement that loading berths have a vertical clearance of 14 feet; and

WHEREAS, the applicant represents that the absence of a loading berth and the inability to install one contributes to the infeasibility of a conforming manufacturing use at the site because it would make it difficult for such a use to receive and transfer bulk shipments; and

WHEREAS, as to the traffic and parking conditions at the site, the applicant represents that the unique traffic and parking conditions in the surrounding area make use of the site for a conforming manufacturing use infeasible; and

WHEREAS, the applicant submitted a traffic and parking study which indicates that the parking regulations on Thompson Street result in only a single travel lane of ten feet in width on most days, which is unique in the surrounding area, thereby narrowing the width of Thompson Street adjacent to the site; and

WHEREAS, the traffic and parking study submitted by the applicant also indicates that Thompson Street is a preferred route for southbound traffic into the Holland Tunnel, which would result in the street being congested at peak periods; and

WHEREAS, the applicant represents that the surrounding traffic and parking conditions would create operational difficulties for a conforming use at the site, further contributing to the infeasibility of such use; and

WHEREAS, the applicant also submitted an affidavit and marketing agreements which indicate that the owner has undertaken marketing efforts to rent or lease the site since 2006, and that the first floor of the site has remained unoccupied for over five years; and

WHEREAS, the Board is not persuaded by the applicant's argument regarding the inability to provide a loading berth since there is no requirement that loading berth be installed should conforming use occupy the first floor, and the applicant hasn't proven that the lack of a loading berth is unique in the surrounding area, as the Board observes that a significant number of buildings in the area similarly lack a loading berth; and

WHEREAS, similarly, the Board finds that the traffic and parking conditions along Thompson Street are not unique to the subject site, and therefore the Board has not considered these conditions as part of the finding under ZR § 72-21(a); and

WHEREAS, however, the Board agrees that the unique physical conditions cited above, specifically the obsolescence of the building related to the floor plates and physical structure, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) a conforming scenario with ground floor warehouse/storage use; (2) a conforming scenario with ground floor business service use; and (3) the currently proposed building; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses; and

WHEREAS, the applicant states that a C1-5 overlay covers the northern end of the subject block, permitting Use Group 6 use of the first floor as-of-right; and

WHEREAS, the applicant further states that a ground floor Use Group 6 restaurant is located adjacent to the north of the site; and

WHEREAS, the applicant has agreed to all of the conditions stipulated by the Community Board; and

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

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

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that there is no proposed increase in the bulk of the building; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6

NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA067M, dated April 23, 2010; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in an M1-5B zoning district, the conversion of the first floor of an existing seven-story mixed-use building to an eating and drinking establishment (Use Group 6) with accessory storage at the cellar level, contrary to ZR § 42-14(d)(2)(b); *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 August 3, 2010"–five (5) sheets; and *on further condition*:

THAT the maximum capacity of the eating and drinking establishment shall not exceed 200 persons;

THAT the hours of operation for the eating and drinking establishment shall be: Sunday through Thursday, from 11:30 a.m. to 12:30 a.m.; and Friday and Saturday, from 11:30 a.m. to 1:30 a.m.;

THAT with regard to the exterior space of the eating and drinking establishment: (1) no sound system or music of any kind shall be permitted; (2) the applicant shall comply with relevant NYC codes and requirements if heated lamps are used; (3) umbrellas shall be provided to reduce noise; (4) it shall be closed at 12:00 a.m. daily; (5) no catered and private events shall be permitted; (6) there shall be no bar located in the exterior space; and (7) the existing perimeter wall around the exterior space shall be retained;

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

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, December 7, 2010.

66-10-BZ

APPLICANT – Eric Palatnik, P.C., for Yury, Aleksandr, Tatyana Dreysler

SUBJECT – Application May 3, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141) and side yards (23-461). R3-1 zoning district.

PREMISES AFFECTED – 1618 Shore Boulevard, South side of Shore Boulevard between Oxford and Norfolk Streets. Block 8757, Lot 86, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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 November 10, 2010, acting on Department of Buildings Application No. 320141173, reads in pertinent part:

"1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed side yards is contrary to ZR 23-461.
5. Proposed rear yard is contrary to ZR 23-47, 23-541;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-541; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in *The City Record*, with continued hearings on August 3, 2010, September 14, 2010, October 19, 2010 and November 9, 2010, and then to decision on December 7, 2010; and

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

Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

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

WHEREAS, the subject site is located on the south side of Shore Boulevard between Norfolk Street and Oxford Street, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,267 sq. ft., and is occupied by a single-family home with a floor area of 1,032 sq. ft. (0.45 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,032 sq. ft. (0.45 FAR) to 2,247 sq. ft. (0.99 FAR); the maximum permitted floor area is 1,134 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 58 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of 2'-11" along the eastern lot line and no side yard along the western lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 20'-1" at the first floor, a depth of 24'-7" at second floor, and a depth of 28'-2" at the attic level (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board directed the applicant to submit evidence documenting that the footprint of the home, including the side yard encroachment, existed prior to December 15, 1961; and

WHEREAS, in response, the applicant submitted a Tax Department form dating back to 1943 which includes a photograph showing the side yard encroachment, as well as a 1973 survey and a 1980 Department of Finance photograph reflecting the existence of the side yard encroachment, and photographs of a number of other homes in the area with similar side yard encroachments; and

WHEREAS, the Opposition raised the following concerns regarding the proposed enlargement: (1) the existing home encroaches upon an easement for light and air in favor of the adjoining neighbor to the west, over the westerly 3'-0" of the site; (2) the applicant has not provided evidence regarding how much of the existing home will be retained and that the proposal should have been filed as a New Building application rather than an Alteration application; (3) the proposed attic contains living space and a bathroom, which are prohibited pursuant to Building Code § 26-254; (4) the applicant's survey indicates that the cellar floor will be below the flood plain; (5) a portion of the proposed parking area will be located on the City-owned sidewalk; and (6) there is a discrepancy between the survey and the plans submitted by the applicant regarding the calculation of the front yard depth; and

WHEREAS, as to the easement over the westerly portion of the site, the applicant states that the deeds associated with the easement do not state the dimensions of the subject home, and therefore it is unclear whether the side yard encroachment pre-existed the establishment of the easement; and

WHEREAS, the Board notes that the portion of the home being enlarged under the subject special permit does not include any portion of the home located within the easement, and therefore the propriety of the encroachment into the easement area is not before the Board under the subject application; and

WHEREAS, in response to the Opposition's concerns regarding which portions of the home are being retained, the applicant submitted revised plans indicating that portions of the first floor and cellar walls will remain, as well as the majority of the existing first floor, and states that the proposal is properly classified as an Alteration application because more than 50 percent of the existing exterior walls are being retained, as required by TPPN # 1/02; and

WHEREAS, the Board notes that compliance with TPPN #1/02 is subject to Department of Buildings ("DOB") review and approval, and is not a required finding of the subject special permit; and

WHEREAS, as to the Opposition's contention that the proposed attic cannot contain living space or a bathroom, the Board notes that the Opposition has not provided any statutory evidence to support this claim, and that Building Code § 26-254, which the Opposition relies on, is a section of the repealed 1968 Building Code relating to the "Regulation of Outdoor Signs;" and

WHEREAS, the Board further notes that it is not waiving any requirements related to the use of the attic, and that the drawings will be subject to DOB review for compliance with all ZR and Building Code regulations; and

WHEREAS, as to the flood plain and the proposed parking on the site, the Board similarly notes that it is not waiving any requirements related to the flood plain or the parking area, which are subject to DOB review and approval; and

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

WHEREAS, as to the Opposition's concerns regarding the calculation of the front yard depth, the Board notes that the discrepancy between the survey and the proposed plans results from the fact that the applicant proposes to increase the depth of the front yard of the subject home from 14'-11" to 18'-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 therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; and

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

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-541; *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 November 23, 2010"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,247 sq. ft. (0.99 FAR); a minimum open space of 58 percent; a maximum lot coverage of 42 percent; 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'-1" at the first floor, 24'-7" at the second floor, and 28'-2" at the attic level, 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, December 7, 2010.

151-10-BZ

APPLICANT – Sheldon Lobel, P.C. for Profile Enterprises, LP, owner; Bamboo Garden Spa, Incorporated, lessee.

SUBJECT – Application August 16, 2010 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Bamboo Garden Spa*). M1-6 zoning district.

PREMISES AFFECTED – 224 West 35th Street, South side of West 35th Street, 225 feet west of Seventh Avenue. Block 784, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, December 7, 2010.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February

15, 2011, at 1:30 P.M., for continued hearing.

192-09-BZ
APPLICANT – Richard Lobel, for Leon Mann, owner.
SUBJECT – Application June 16, 2009 – Special Permit (§72-52) to allow for the construction of a commercial building with accessory parking. R6 and R6/C2-3 zoning districts.
PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Richard Lobel.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

194-09-BZ
APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.
SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.
PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.
COMMUNITY BOARD # 18BK
APPEARANCES –
For Applicant: Josh Rhinesmith.
ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

6-10-BZ
APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.
SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning district.
PREMISES AFFECTED – 2147 Mill Avenue, Northeast side of Mill Avenue between Avenue U and Strickland Avenue. Block 8463, Lot 65, Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Richard Lobel.
ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for adjourned hearing.

29-10-BZ
APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.
SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.
PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Irving Minkin.
ACTION OF THE BOARD – Laid over to January 25, 2011, 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 January 11, 2010, at 1:30 P.M., for adjourned hearing.

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 (§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
APPEARANCES –
For Applicant: Eric Palatnik, Robert Pauls, Dominique Pistone, Murray Burgher and Sylvia Hack.
ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for continued hearing.

130-10-BZ
APPLICANT – Sheldon Lobel, P.C., for John Ingravallo,

owner.
SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.
PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.
COMMUNITY BOARD #10BK
APPEARANCES –
For Applicant: Jordan Most and Felix Tambasco.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

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 (§43-12), height (§43-43), and use (§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
APPEARANCES –
For Applicant: Neil Weisbard, Herman Galvis and Robert Pauls.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

174-10-BZ
APPLICANT – The Briarwood Organization, LLC, for English Evangelical Church of Redeemer, owner.
SUBJECT – Application August 27, 2010 – Special Permit (§73-44) to allow for a reduction in parking for a mixed office and community facility building. R4/C2-2 zoning district.
PREMISES AFFECTED – 36-29 Bell Boulevard, between 36th Avenue and 38th Avenue, Block 6176, Lot 61 p/o 2, Borough of Queens.
COMMUNITY BOARD #11Q
APPEARANCES –
For Applicant: Eldad Gothelf and Carrie O'Farrell.
For Opposition: Henry Euler, Christina Scherer and Jason Devore.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

175-10-BZ
APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Inc., owner.
SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.
PREMISES AFFECTED – 3400 Baychester Avenue, Norhteast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.
COMMUNITY BOARD #12BX
APPEARANCES –
For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to January 11, 2011, at 1:30 P.M., for continued hearing.

181-10-BZ
APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.
SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential conversion of an existing building. M1-2/R6A (MX-8) zoning district.
PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope 0Street, Block 2368, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #1BK
APPEARANCES –
For Applicant: Patrick W. Jones and Jim Hyneman.
For Opposition: Mike Schlegel, Mark Gibian, Lisa Steiner and Conroy D. Symister.

ACTION OF THE BOARD – Laid over to January 25, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on November 23, 2010, under Calendar Nos. 237-09-A & 238-09-A and printed in Volume 95, Bulletin No. 48, is hereby corrected to read as follows:

237-09-A & 238-09-A
APPLICANT – Rothkrug Rothkrug & Spector, LLP for Safet Dzemovski, owner.
SUBJECT – Application July 31, 2009 – Proposed construction in the bed of a mapped street, contrary to General City Law Section 35. R3X zoning district.
PREMISES AFFECTED – 81 & 85 Archwood Avenue, aka 5219 Amboy Road, east side of Archwood Avenue, 198.25' north of Amboy Road, Block 6321, Lot 152 & 151, Borough of Staten Island.
COMMUNITY BOARD #3SI
APPEARANCES –
For Applicant: Trevis Savage.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657 reads in pertinent part:

> "The Proposed project is in the bed of a mapped street, which is contrary to GCL 35 and therefore it is referred to the Board of Standards for review;" and

WHEREAS, this is an application to permit the proposed construction of two two-family homes located within the bed of a mapped street, Archwood Avenue, contrary to Section 35 of the General City Law; 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 27, 2010, September 14, 2010 and October 26, 2010, and then to decision on November 23, 2010; and

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

WHEREAS, during the course of the hearing process, the applicant amended its proposal and submitted a revised site plan reflecting that the proposed homes will be located completely outside the proposed lines of Archwood Avenue, which will be paved to its fully mapped width of 38'-0" in front of the proposed homes, thereby limiting the proposed encroachment to a portion of the sidewalk area; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of the initial version of the application; and

WHEREAS, Borough President James P. Molinaro recommends approval of the revised proposal, with the following conditions: (1) the portions of Archwood Avenue being opened are constructed to a width of 38'-0"; (2) the proper sidewalk treatment for a 60'-0" mapped street be incorporated into the proposal, such that the sidewalk width is 19'-0" instead of the proposed width of 11'-0"; and (3) a Declaration of Public Use be filed against the properties; and

WHEREAS, in response to the Staten Island Borough President, the applicant states that the requested conditions cannot be accommodated for the following reasons: (1) the plans include paving Archwood Avenue to 38'-0" in width in the areas that the applicant owns all 38'-0" of the roadbed, but there are small areas that are not owned by the applicant and where a 38'-0" width therefore cannot be provided; (2) the plans include a sidewalk with a width of 11'-0", which aligns with the existing sidewalk to the north of the site, and widening the sidewalk to a width of 19'-0" would result in the further reduction in the size of the proposed homes or yards; and (3) maintenance of the proposed homes as a private area as opposed to a public street is critical to the viability of the development, as dedication of the area as a public street would result in additional requirements which would create further delays and expense to the owner; and

WHEREAS, by letter dated September 8, 2009, the Department of Environmental Protection ("DEP") states that: (1) there is an existing ten-inch diameter sanitary sewer, a 24-inch diameter storm sewer, and an eight-inch diameter city water main in Archwood Avenue between Amboy Road and Bennett Avenue; and (2) Drainage Plan No. D-11, sheet 4 of 8, calls for a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Archwood Avenue between Amboy road and Bennett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the total width of the mapped street, Archwood Avenue, and the widening portion of the street between Amboy Road and Bennett Avenue; (2) the distance between the northerly lot line of tentative Lot 152 and the terminal manholes of the existing ten-inch diameter sanitary sewer and the 24-inch diameter storm sewer, the distance between the westerly lot line of tentative Lot 152 and the existing eight-inch diameter water main, and the distance from the northerly lot line of tentative Lot 152 to the water main end cap; and (3) a sewer corridor with a width of 33'-0" in the bed of the mapped street, Archwood Avenue, for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, the 12-inch diameter storm sewer, and the existing eight-inch diameter city water main: and

WHEREAS, in response to DEP's request, on December 1, 2009 the applicant submitted a letter from the architect regarding a meeting with DEP on September 11, 2009, where it was determined that providing a sewer corridor would not be required at the subject location
because any such future extensions would pass through the private property and would not benefit any additional lots because the subject site is the last developable lot on Archwood Avenue; and

WHEREAS, additionally, on April 15, 2010 the applicant submitted a revised site plan in response to DEP's September 8, 2009; and

WHEREAS, by letter dated May 17, 2010, DEP stated that it reviewed the revised site plan and that: (1) the applicant must provide an access corridor with a width of 20'-0" along the eight-inch city water main in the bed of Archwood Avenue which protrudes inside Lot 152; (2) the applicant's proposal for a skewed connection
for Lot 152 is not acceptable; and (3) it may be necessary to form a Homeowners Association to provide sewer connections, water connections and access to Lot 151; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that: (1) an easement will be provided in favor of DEP for the maintenance of the eight-inch city water main in the bed of Archwood Avenue; (2) the existing skewed sewer connection will be replaced with a straight extension; and (3) a Homeowners Association will be filed for the maintenance of DEP facilities, common roadway and a proposed DEP easement for access to the facilities; and

WHEREAS, by letter dated November 22, 2010, DEP states that it reviewed the proposal and has no objection; and

WHEREAS, by letter dated June 8, 2010, in response to the applicant's initial proposal, the Fire Department stated that it objects to the construction of any buildings in the bed of Archwood Avenue; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not reflect any buildings in the roadbed; and

WHEREAS, by letter dated July 26, 2010, the Fire Department states that it has reviewed the revised site plan and had the following requirements as conditions for approval of the application: (1) the dwellings must be fully sprinklered in conformity with Local Law 10 of 1999 and Reference Standard 17-2B of the New York City Building Code; (2) interconnected smoke alarms must be designed and installed in the dwelling in compliance with NYC Building Code Section 907.2.10; (3) a fire apparatus access road must be constructed in accordance with the requirements of FDNY FC 503.7; (4) "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7; and (5) the height of the dwelling must not exceed 35 feet above grade plane; and

WHEREAS, in response, the applicant submitted a revised site plan which incorporated all of the Fire Department's requirements; and

WHEREAS, by letter dated February 22, 2010, in response to the applicant's initial proposal, the Department of Transportation ("DOT") stated that it reviewed the project and would prefer an option that does not infringe on the roadbed; and

WHEREAS, subsequently, the applicant revised its site plan to provide for the current proposal, which does not include any buildings in the roadbed; and

WHEREAS, by letter dated November 5, 2010, DOT states that it reviewed the 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 Staten Island Borough Commissioner, dated July 2, 2009, acting on Department of Buildings Application Nos. 520010666 and 520010657, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 22, 2010" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT fire safety measures shall be installed and maintained in accordance with the BSA-approved plans;

THAT "No Parking" signage shall be posted at the entrance to the fire apparatus access road in accordance with the requirements of FDNY FC 503.7;

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, November 23, 2010.

The resolution has been corrected in the 2nd WHEREAS, portion which read:** *"…proposed construction of two single-family home…;"* ***now reads: *"…proposed construction of two two-family homes…;"*. **Corrected in Bulletin Nos. 49-50, Vol. 95, dated December 16, 2010.**

***CORRECTION**

This resolution adopted on November 9, 2010, under Calendar No. 91-10-BZ and printed in Volume 95, Bulletin Nos. 45-46, is hereby corrected to read as follows:

91-10-BZ
APPLICANT – Eric Palatnik, P.C., for Lawrence Kimel, owner.
SUBJECT – Application May 17, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space, lot coverage and floor area (§23-141); side yard (§23-461); rear yard (§23-47) and perimeter wall height (§23-631). R3-1 zoning district.
PREMISES AFFECTED –123 Coleridge Street, south of Hampton Street, Block 8735, Lot 35, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 16, 2010, acting on Department of Buildings Application No. 310126510, reads in pertinent part:

"1. Proposed floor area is contrary to ZR 23-141.
2. Proposed open space ratio is contrary to ZR 23-141.
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed side yard is contrary to ZR 23-461.
5. Proposed rear yard is contrary to ZR 23-47.
6. Proposed perimeter wall height is contrary to ZR 23-631;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed legalization and enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on August 3, 2010, after due notice by publication in *The City Record*, with continued hearings on September 14, 2010 and October 19, 2010, and then to decision on November 9, 2010; and

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

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

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

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

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 3,665 sq. ft. (0.61 FAR); and

WHEREAS, the applicant states that the subject home was enlarged to its current floor area in 2009; the applicant now proposes to legalize the previous enlargement and construct an additional enlargement of the subject home; 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 3,665 sq. ft. (0.61 FAR) to 5,049 sq. ft. (0.84 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 63 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 37 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing non-complying side yard with a width of approximately 4'-9" along the southern lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of approximately 21'-3" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to maintain the existing non-complying perimeter wall height of approximately 23'-9" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

WHEREAS, the Board notes that the adjacent single family home at 129 Coleridge Street has a perimeter wall height of 23'-9"; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence that the current perimeter wall height was existing prior to the owner's previous enlargement of the home; and

WHEREAS, in response, the applicant provided photographs of the home prior to the construction of the previous enlargement, which reflect that the previously existing perimeter wall height has been maintained; and

WHEREAS, the Opposition contends that the Board should deny the application because the prior enlargement of the home was performed illegally; and

WHEREAS, the Board notes that when an applicant satisfies the findings pursuant to ZR § 73-622, there is no

legal basis to deny the special permit merely because it is a partial legalization rather than entirely new construction; and

WHEREAS, the Opposition further contends that the applicant failed to address an objection issued by DOB regarding the proposed attic at the site; and

WHEREAS, in response, the applicant notes that it submitted a reconsideration issued by DOB on March 17, 2010, resolving the attic issue; 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 enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47 and 23-631; *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 August 24, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,049 sq. ft. (0.84 FAR); a minimum open space of 63 percent; a maximum lot coverage of 37 percent; a side yard with a minimum width of approximately 4'-9" along the southern lot line; a side yard with a width of 8'-6" along the northern lot line; a rear yard with a minimum depth of approximately 21'-3"; and a maximum perimeter wall height of approximately 23'-9", 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, November 9, 2010.

***The resolution has been corrected to add WHEREAS 17th & 18th clauses. Corrected in Bulletin Nos. 49-50, Vol. 95, dated December 16, 2010.**