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25-10-A
223-15 Mia Drive, Mia Drive between 223rd Street and Cross Island Parkway., Block 6343, Lot(s) 154-157, Borough of **Queens, Community Board: 11**. Appeal for common law vested rights to continue development unnder the prior zoning district. R1-2 district.

26-10-A
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DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.

CALENDAR

MARCH 9, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 9, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

617-80-BZ
APPLICANT – Eric Palatnik, P.C. for J & S Simcha, Incorporated, owner.
SUBJECT – Application February 5, 2010 – Extension of Term of a previously granted Variance (§72-21) of a UG9 Catering Establishment which expires on December 9, 2010; an Amendment to the interior layout; Extension of Time to Complete Construction and to obtain a Certificate of Occupancy which expires on March 14, 2010 and Waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 770/780 McDonald Avenue, West side of McDonald Avenue, 20' south of Ditmas Avenue. Block 5394, Lots 1 & 11, Borough of Brooklyn.
COMMUNITY BOARD #12BK

121-02-BZ
APPLICANT – Rothkrug, Rothkrug & Spector LLP, 9215 4th Avenue, LLC, owner.
SUBJECT – Application November 11, 2010 –Amendment (§73-11) to reopen and amend previous resolution to permit enlargement of an existing Physical Culture Establishment. C8-2 zoning district.
PREMISES AFFECTED – 9215 4th Avenue, east side of 4th Avenue, 105' south of intersection with 92nd Street, Block 6108, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #10BK

APPEALS CALENDAR

185-09-A & 186-09-A
APPLICANT – Diffendale & Kubec, AIA, for G.L.M. Development Corp., owner.
SUBJECT – Application June 6, 2009 – Construction not fronting on a mapped street, contrary to section 36 of the General City Law. R3x Zoning district.
PREMISES AFFECTED – 61 and 67 Elder Avenue, Elder Avenue prolongation 102.4' north of Kenneth Place, Block 6789, Lot 142, 144, Borough of Staten Island.
COMMUNITY BOARD #3SI

283-09-BZY thru 286-09-BZY
APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Alco Builders, Inc., owners.
SUBJECT – Application October 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R4-1 zoning district.
PREMISES AFFECTED – 90-18 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 60 (tent), Borough of Queens.
COMMUNITY BOARD #12Q

MARCH 9, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 9, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

254-09-BZ thru 256-09-BZ
APPLICANT – Ivan F. Khoury, for Kearney Realty Corporation, owner.
SUBJECT – Application September 4, 2009 – Variance (ZR §72-21) to legalize three existing homes contrary to front yard (ZR §23-45) and rear yard (ZR §23-47) regulations. R3-2 district.
PREMISES AFFECTED – 101-03/05/07 Astoria Boulevard aka 27-31 Kearney Street, north side of Astoria Boulevard & northeasterly side of Kearney Street, Block 1659, Lot 51, 53, 56, Borough of Queens.
COMMUNITY BOARD #3Q

325-09-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Yetev Lev 11th Avenue, owner.
SUBJECT – Application December 7, 2009 – Variance (§72-21) to permit the proposed four-story and mezzanine synagogue. The proposal is contrary to lot coverage (§24-11), rear yard (§24-36) and initial setback of front wall (§24-522). R6 zoning district.
PREMISES AFFECTED – 1364 & 1366 52nd street, south side of 52nd Street, 100' west of 14th Avenue, Block 5663, Lot 31 & 33, Borough of Brooklyn.
COMMUNITY BOARD #12BK

15-10-BZ
APPLICANT – Dennis D. Dell'Angelo, for Avraham Rosenshein, owner.
SUBJECT – Application February 1, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.
PREMISES AFFECTED – 3114 Bedford Avenue, west side of Bedford Avenue, 100' north of Avenue J, Block 7588, Lot 80, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, FEBRUARY 23, 2010
10:00 A.M.

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

SPECIAL ORDER CALENDAR

818-59-BZ
APPLICANT – Akerman Senterfitt for 139 East 33rd Street Corporation, owner; Central Parking System of NY, Incorporated, lessee.
SUBJECT – Application July 24, 2009 – Extension of Term (§11-411) to permit the use of surplus parking spaces of an accessory garage to a multiple dwelling for transient parking which expired on July 6, 2001. C1-9 & C6-1 zoning district.
PREMISES AFFECTED – 139 East 33rd Street, north side of 33rd Street and north west corner of 220/226 Lexington Avenue, Block 889, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Jessica Loeser.
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 July 6, 2001; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application, with the condition that 13 bicycle spaces be provided in the garage; and

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

WHEREAS, the subject site is located on the northwest corner of East 33rd Street and Lexington Avenue; and

WHEREAS, the site is located partially within a C1-9 zoning district and partially within a C6-1 zoning district, and is occupied by a 14-story and penthouse residential/commercial building; and

WHEREAS, the basement, cellar and sub-cellar are occupied by a 125-space accessory garage, with 35 spaces in the basement, 30 spaces in the cellar and 60 spaces in the sub-cellar; and

WHEREAS, on July 6, 1960, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit a maximum of 80 surplus parking spaces to be used for transient parking for a term of 21 years; and

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

WHEREAS, on July 14, 1992, the Board granted a ten-year extension of term, which expired on July 6, 2001; a condition of the grant was that a certificate of occupancy be obtained by July 14, 1993; and

WHEREAS, most recently, on January 12, 1999, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant now requests an 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, in response to concerns raised by the Community Board, the applicant submitted plans reflecting the inclusion of 13 bicycle spaces in the garage; and

WHEREAS, at hearing, the Board requested that the applicant relocate the accessory sign closer to the building so as to minimize its extension over the sidewalk; and

WHEREAS, in response, the applicant submitted a revised signage plan and photographs reflecting that the sign has been relocated 0'-6" closer to the building to comply with the underlying zoning regulations; 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 July 6, 1960, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional 15 years from July 6, 2001, to expire on July 6, 2016; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 20, 2009' –(5) sheets and 'February 9, 2010'-(1) sheet; and *on further condition*:

THAT this term shall expire on July 6, 2016;

THAT signage shall comply with the underlying zoning district regulations;

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."

(Alt. 1451/59)

Adopted by the Board of Standards and Appeals, February 23, 2010.

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayrdktar, lessee.

SUBJECT – Application December 15, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Shell*) which expired on October 28, 2009; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 185-25 North Conduit Avenue, north west corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on October 16, 1997; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

WHEREAS, the subject premises is located on a through-block site fronting on 144th Avenue to the north, Springfield Boulevard to the east and North Conduit Avenue to the south, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1971 when, under the subject calendar number, the Board granted a special permit for the reconstruction of an automobile service station with accessory uses on the site; and

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

WHEREAS, on February 7, 1984, in conjunction with a change to a self-service gasoline station under BSA Cal. No. 699-83-A, the Board permitted the construction of a steel canopy over three new gasoline pump islands with new self-serve pumps, the installation of an 8'-0" by 20'-0" kiosk, and a reduction in the size of the existing accessory building; and

WHEREAS, on June 25, 1985, the Board extended the time to complete construction; and

WHEREAS, on October 16, 1996, the Board amended the resolution to permit the demolition of the existing kiosk and the construction of a new accessory building to be occupied by a convenience store; a condition of the grant was that a new certificate of occupancy be obtained by October 16, 1997; and

WHEREAS, most recently, on April 28, 2009, the Board granted an extension of time to obtain a certificate of occupancy, which expired on October 28, 2009; and

WHEREAS, the Board notes that previous resolutions under the subject calendar number refer to the subject site as "Lot 68," but the premises is instead located on a portion of Lot 63; and

WHEREAS, the applicant states that the previous resolutions referred to "Lot 68" because the applicant intended to subdivide Lot 63 to create a new tax lot denominated as Lot 68 which would be occupied by the subject gasoline service station; and

WHEREAS, the applicant states that the effort to secure a separate zoning lot was discontinued; and

WHEREAS, thus, the premises has been and continues to be located on a part of Lot 63; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 22, 1971, so that as amended this portion of the resolution shall read: "to grant a one-year extension of time to obtain a certificate of occupancy, to expire on February 23, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 23, 2011;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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. 400612413)

Adopted by the Board of Standards and Appeals February 23, 2010.

62-96-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for 200 Madison LLC, owner; TSI East 36 LLC d/b/a The New York Sports Club, lessee.
SUBJECT – Application November 23, 2009 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on February 4, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on January 10, 2007 and Waiver of the Rules. C5-2 zoning district.
PREMISES AFFECTED – 200 Madison Avenue, west side of Madison Avenue between East 35th Street and East 36th Street, Block 865, Lot 14, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Fredrick A. Becker.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment ("PCE"), which expired on April 21, 2008, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the PCE is located on the west side of Madison Avenue, between East 35th Street and East 36th Street, within a C5-2 zoning district; and

WHEREAS, the site is occupied by a 25-story commercial building; and

WHEREAS, the PCE occupies a total floor area of 10,289 sq. ft. on the first floor and mezzanine, with an additional 16,175 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on February 4, 2007; and

WHEREAS, most recently, on January 10, 2006, the Board approved an expansion on the first floor of the facility, as well as a change in ownership and operator of the PCE; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years and to extend the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy within the stipulated time because there are open Department of Buildings ("DOB") applications within the building, unrelated to the special permit use, which prevented the applicant from obtaining a certificate of occupancy; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on February 4, 1997, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from February 4, 2007, to expire on February 4, 2017, and to extend the time to obtain a certificate of occupancy to February 23, 2011, *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 23, 2009'-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 4, 2017;

THAT a certificate of occupancy shall be obtained by February 23, 2011;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 101225620)

Adopted by the Board of Standards and Appeals, February 23, 2010.

375-02-BZ
APPLICANT – Moshe M. Friedman, for Congregation Tzolsa D'Shlomo, owner.
SUBJECT – Application June 4, 2009 – Amendment to a variance to modify plans for a house of worship and rectory; Extension of time to complete construction and obtain a Certificate of Occupancy. R5 zoning district.
PREMISES AFFECTED – 1559 59th Street, north side of 59th Street, 400' west from the intersection of 59th Street and 16th Avenue, Block 5502, Lot 54, Borough of Brooklyn.
COMMUNITY BOARD #12BK
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, an extension of time to complete construction and obtain a certificate of occupancy, and an amendment to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the subject site is located on the north side of 59th Street, between 15th Avenue and 16th Avenue, within an R5 zoning district; and

WHEREAS, on July 22, 2003, the Board granted an application under ZR § 72-21, to permit, in an R5 zoning district, the enlargement of a four-story with cellar synagogue and rabbi's apartment (rectory); and

WHEREAS, substantial construction was to be completed by July 22, 2007 in accordance with ZR § 72-23; and

WHEREAS, the applicant now seeks to reflect changes to the interior layout of the building; and

WHEREAS, the applicant represents that the requested changes to the interior layout are necessary to accommodate the Rabbi's apartment on the third floor and the Sexton's apartment on the fourth floor; and

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

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 22, 2003, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the BSA-approved plans and to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on February 23, 2012; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 26, 2010"- Two (2) sheets "Received October 13, 2009"- Ten (10) sheets and *on further condition*:

THAT substantial construction shall be completed and a new certificate of occupancy shall be obtained by February 23, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 301480733)

Adopted by the Board of Standards and Appeals, February 23, 2010.

35-09-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.
SUBJECT – Application December 9, 2009 – Extension of Time to obtain a Certificate of Occupancy for a (UG16) contractors' establishment on the ground floor of a two-story building which expired on December 9, 2009. R7A zoning district.
PREMISES AFFECTED – 345-347 East 103rd Street, north side of East 103rd Street, between First and York Avenues, Block 1675, Lots 21 and 22, Borough of Manhattan.
COMMUNITY BOARD #11M
APPEARANCES –
For Applicant: James Power.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a contractor's establishment (UG 16), which expired on December 9, 2009; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in the *City Record*, and then to decision on February 23, 2010; and

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

WHEREAS, the premises is located on the north side of East 103rd Street, between First Avenue and York Avenue, within an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1938 when, under BSA Cal. No. 958-38-BZ, the Board granted a variance to permit the conversion of part of the first floor of the building, then located in a business use district, to a garage for more than five cars; and

WHEREAS, on June 20, 1950, under BSA Cal. No. 958-38-BZ Vol. II, the Board permitted a change in occupancy from a garage for more than five motor vehicles to a motor

vehicle repair shop, for a term of five years; and

WHEREAS, subsequently, the grant was amended to include the entire first floor, and the term of the grant was extended; and

WHEREAS, on May 24, 1966, under BSA Cal. No. 958-38-BZ Vol. III, the Board amended the resolution to permit the use of the premises as a contractor's establishment (UG 16) and extended the term; and

WHEREAS, on March 1, 1977, the grant was amended and the term extended for five years, to expire on March 1, 1982; and

WHEREAS, most recently, on June 9, 2009, under the subject calendar number, the Board reinstated the expired variance for a contractor's establishment (UG 16) pursuant to ZR § 11-411, and legalized the extension of the contractor's establishment to the second floor of the building pursuant to ZR § 11-412; a condition of the grant was that a certificate of occupancy be obtained by December 9, 2009; and

WHEREAS, the applicant now seeks an 18-month extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that it was unable to obtain a certificate of occupancy by the stipulated date due to construction delays; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 9, 2009, so that as amended this portion of the resolution shall read: "to grant an 18-month extension of time to obtain a certificate of occupancy, to expire on August 23, 2011; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by August 23, 2011;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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. 110008688)

Adopted by the Board of Standards and Appeals, February 23, 2010.

16-36-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner
SUBJECT – Application October 27, 2009 – Extension of Time to obtain a Certificate of Occupancy of an existing Gasoline Service Station (*Gulf*) which expired on March 18, 2009; Waiver of the Rules. C2-2/R5 zoning district.
PREMISES AFFECTED – 1885 Westchester Avenue, southeast corner of the intersection between Westchester Avenue and White Plains Road, Block 3880, Lot 1, Borough of Bronx.
COMMUNITY BOARD #9BX
APPEARANCES –
For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for continued hearing.

389-37-BZ
APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner.
SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.
PREMISES AFFECTED – 31-08 – 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.
COMMUNITY BOARD #1Q
APPEARANCES –
For Applicant: Fredrick A. Becker.

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

834-60-BZ
APPLICANT **–** Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.
SUBJECT – Application October 20, 2009 – Extension of Term for the continued use of a Gasoline Service Station (*Gulf*) with minor auto repairs which expired on March 7, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on March 2, 2000; Amendment to legalize an accessory convenience store and Waiver of the Rules. C2-4/R-7A, R-5B zoning district.
PREMISES AFFECTED – 140 Vanderbilt Avenue, northwest corner of Myrtle Avenue and Vanderbilt Avenue, Block 2046, Lot 84, Borough of Brooklyn.
COMMUNITY BOARD #2BK
APPEARANCES –
For Applicant: Josh Rinesmith.

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

21-91-BZ
APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.
SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & §72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which

expired on July 24, 2009; Waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.
COMMUNITY BOARD #5BK
APPEARANCES –
For Applicant: Josh Rhinesmith.
For Opposition: Ronald J. Dillon.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for decision, hearing closed.

280-01-BZ
APPLICANT – Cozen O'Connor, Esqs., for Perlbinder Holdings, LLC, owners.
SUBJECT – Application February 3, 2010 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the construction of a mixed-use building which expires on May 7, 2010. C1-9 zoning district.
PREMISES AFFECTED – 663-673 Second Avenue, west side of Second Avenue from 36th Street to 37th Street, Block 917, Lot 21, 24, Borough of Manhattan.
COMMUNITY BOARD #6M
APPEARANCES –
For Applicant: Peter Geis.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for decision, hearing closed.

208-03-BZ
APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.
SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.
PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Stuart A. Klein.
ACTION OF THE BOARD – Laid over to March 16, 2010, at 10 A.M., for adjourned hearing.

DISMISSAL CALENDAR

238-08-BZ
APPLICANT – NYC Board of Standards and Appeals
OWNER: Chim Yidel Lafkowitz
SUBJECT – Application for dismissal for lack of prosecution of a variance (§72-21) for a residential building, contrary to use regulations (§42-00). M1-1/R2 district.
PREMISES AFFECTED – 876 Kent Avenue, west side of Kent Avenue, approximately 91' north of the intersection of Myrtle Avenue, Block 1897, Lot 56, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES –
For Applicant: Josh Rinesmith.
ACTION OF THE BOARD – Application dismissed.
THE VOTE TO DISMISS –
Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 20, 2008, acting on Department of Buildings Application No. 310072818, reads in pertinent part:

"ZR 22-00. Residential use is not permitted in manufacturing district;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four and one-half story residential building, contrary to ZR § 22-00; and

WHEREAS, the variance application was filed on September 19, 2008; and

WHEREAS, on November 5, 2008, Board staff issued a Notice of Objections to the applicant; and

WHEREAS, the Notice of Objections requested that the applicant submit the following: (1) copies of and proof of mailing for the letters sent to the affected Community Board, District Council member, Borough President, City Planning Commission and the Department of Buildings; (2) a revised Statement of Facts and Findings; (3) a revised economic analysis; (4) revised plans; and (5) a revised Environmental Assessment Statement; and

WHEREAS, on October 30, 2009, Board staff issued a letter notifying the applicant that if no response to the Notice of Objections was received within 45 days of the letter, the Board would schedule a dismissal hearing; and

WHEREAS, on December 10, 2009, the applicant submitted a letter requesting an additional six weeks to provide a complete submission in response to the Notice of Objections; an extension of time to respond was granted until January 21, 2010; and

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

WHEREAS, accordingly, the Board placed the matter on

the calendar for dismissal; and

WHEREAS, on January 29, 2010, the Board sent the applicant a notice stating that the case had been put on the February 23, 2010 dismissal calendar; and

WHEREAS, the applicant appeared at the hearing on February 23, 2010, but failed to provide any response; and

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

Therefore it is Resolved that the application filed under BSA Cal. No. 238-08-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, February 23, 2010.

APPEALS CALENDAR

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.

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

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

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 3, 2009, acting on Department of Buildings Application Nos. 510066544, 510066483, 510066456, 510066465, 510066447, 510066562, 510066535, 510066553, 510066438, 510066429, 510066517, 510066526, 510066492, 510066508, 510066474, reads in pertinent part:

"The development site does not front a final mapped street. Filing is contrary to GCL 36." and

WHEREAS, these applications request permission to build 15 two-story, single-family homes not fronting on a mapped street; and

WHEREAS, a public hearing was held on these applications on December 8, 2009, after due notice by publication in the *City Record*, with continued hearings on January 12, 2010 and February 9, 2010, and then to decision on February 23, 2010; and

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

WHEREAS, by letter dated November 13, 2009, the Fire Department states that it has no objections to the proposed construction provided that the entire buildings be fully sprinklered and that interconnected smoke alarms be installed; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that all of the homes will be sprinklered; and

WHEREAS, by letter dated November 25, 2009, the Fire Department states that it has no objections to the proposed construction; and

WHEREAS, by letter dated June 3, 2009, the Department of Environmental Protection ("DEP") states that it has certified the site connection proposal for this project; and

WHEREAS, by letter dated October 29, 2009, DEP approved a Franchise of Revocable Consent from the Department of Transportation for the construction, maintenance and use of a sanitary force main together with a manhole under and along Melvin Avenue between Wild Avenue and Westerly Dead End; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated June 3, 2009, acting on New Building Permit Nos. 510066544, 510066483, 510066456, 510066465, 510066447, 510066562, 510066535, 510066553, 510066438, 510066429, 510066517, 510066526, 510066492, 510066508, 510066474, is hereby modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received February 5, 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 DOB shall review the proposed lot subdivision prior to the issuance of any permit;

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 a Homeowners Association shall be established to maintain the private internal sanitary easement; 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, February 23, 2010.

312-09-A thru 323-09A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 340 CS Holdings, LLC, owner.

SUBJECT – Application November 24, 2009 – Appeal

seeking a common law vested right to complete construction commenced under the prior R6/C1-3 zoning district. R6A /C2-4 & R6B zoning district.

PREMISES AFFECTED – 340 Court Street, 283-291 Union Street, 292-298 Sackett Street, Block 339, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: James Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on a development consisting of a seven-story mixed-use residential/commercial/community building and 11 four-story townhouses under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on February 2, 2010, after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

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

WHEREAS, the site is located on a through lot bounded by Sackett Street to the north, Court Street to the east, and Union Street to the south, and has a lot area of 43,753 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use residential / commercial / community facility building and 11 four-story townhouses (the "Development"), a total of 119,271 sq. ft. of floor area (2.73 FAR), a base height ranging between 38'-0" and approximately 48'-8", and a maximum building height of 70'-0"; and

WHEREAS, the portion of the subject site within 100 feet of Court Street is currently located within a C2-4 (R6A) zoning district and the remaining portion of the site is located within an R6B district; prior to the rezoning, the portion of the site within 150 feet of Court Street was located within a C1-3 (R6) district and the remaining portion was located within an R6 district; and

WHEREAS, the Development complies with the former C1-3 (R6) and R6 zoning district parameters; specifically with respect to floor area and height; and

WHEREAS, however, on October 28, 2009 (the "Enactment Date"), the City Council voted to adopt the Carroll Gardens/Columbia Street Rezoning, which rezoned the site to C2-4 (R6A) and R6B, as noted above; and

WHEREAS, the Development does not comply with the new zoning district parameters as to floor area and height; and

WHEREAS, because the Development is not in compliance with these provisions of the C2-4 (R6A) and R6B zoning district and work on the foundation was not completed as of the Enactment Date, the permits lapsed by operation of law; and

WHEREAS, the applicant now requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed construction; and

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

WHEREAS, the Board notes that Permit Nos. 30132200-01-EW-OT, 310153213-01-NB, 320023620-01-NB, 320023639-01-NB, 320023611-01-NB, 320029768-01-NB, 320029777-01-NB, 320037900-01-NB, 320031185-01-NB, 320022104-01-NB, 320020357-01-NB, 320020366-01-NB, 320020375-01-NB, (the "Permits"), which authorized construction of the Development pursuant to C1-3 (R6) and R6 zoning district regulations were issued on May 30, 2008, June 24, 2008, October 16, 2009, October 20, 2009, and October 21, 2009; and

WHEREAS, by letter dated December 23, 2009, DOB stated that the Permits were lawfully issued, authorizing construction of the proposed Development prior to the Enactment Date; and

WHEREAS, the Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new C2-4 (R6A) and R6B zoning district regulations and DOB determined that the Development's foundation was not complete; and

WHEREAS, the Board has reviewed the record and agrees that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the applicant represents that if DOB had classified the Development as a major development pursuant to ZR § 11-31(c)(2)(i), it would have satisfied the vesting criteria of ZR § 11-331; and

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date;" and

WHEREAS, the Board notes that ZR § 11-31(c)(1)(i) defines a "minor development" as the construction of any single building which will be non-conforming or non-complying under the provisions of any applicable amendment to the Zoning Resolution; and

WHEREAS, the Board further notes that ZR § 11-31(c)(2)(i) defines a "major development" as the construction of two or more buildings on a single zoning lot,

which will be non-complying under the provisions of any applicable amendment to the Zoning Resolution; and

WHEREAS, the applicant states that because all of the proposed buildings on the subject site touch, DOB determined that the proposed development constitutes a single building for purposes of the Zoning Resolution, and therefore is defined as a "minor development;" and

WHEREAS, as a result, DOB concluded that the Development did not meet the vesting criteria for a minor development under ZR § 11-331, which requires that all foundation work for the development must be complete prior to the effective date of the rezoning; and

WHEREAS, the applicant represents that the foundation for the seven-story mixed-use portion of the Development was completed prior to the effective date of the rezoning; therefore if DOB had classified the Development as a major development, it would have satisfied the vesting criteria of ZR § 11-331 because the foundations for at least one building in the development were completed prior to the effective date of the rezoning; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation for the entire site, 100 percent of excavation and foundation work for the seven-story mixed-use portion of the Development, including the pouring of 2,003 cubic yards of concrete, or 73 percent of the concrete required for all of the foundations; and

WHEREAS, the applicant represents that the construction completed thus far constitutes the most difficult and complex portions of the Development; and

WHEREAS, the applicant states that the remaining work required to complete the structural foundation consists of the completion of form work for the townhouses, the placing of rebar, and the pouring of concrete, which will not present any particular complications or delays; and

WHEREAS, the applicant states that work pursuant to the Permits was performed for 200 working days prior to the Enactment Date, and that approximately 320 more working days are required to complete the Development, including approximately 40 days of work to fully complete the excavation and foundations for the townhouses; and

WHEREAS, in support of these assertions, the applicant submitted the following evidence: photographs of the site showing the amount of work completed prior to the Enactment Date; concrete pour tickets; a construction contract; a construction log; affidavits from the owner, contractor, and engineer; a letter of completion from DOB regarding Job No. 310132200; and copies of cancelled checks; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended $11,271,781, including hard and soft costs and irrevocable commitments, out of $61,664,800 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted a construction contract, cancelled checks, accounting tables, and concrete pour tickets; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid $5,781,132 in costs related to site preparation, excavation, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional $5,490,049 in connection with costs committed to the development under irrevocable contracts prior to the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 18 percent of the projected total cost; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts

considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to the serious loss, the applicant represents that the rezoning would result in a serious loss for the owner, as it would decrease the maximum floor area of the project by 14,677 sq. ft., from 119,270 sq. ft. to 104,593 sq. ft.; and

WHEREAS, the applicant states that the decrease in floor area would result in the loss of one entire townhouse (2,234 sq. ft.) in the R6B portion of the site and 12,344 sq. ft. of residential floor area in the seven-story mixed-use residential/commercial/ community facility building proposed for the C2-4 (R6A) portion of the site; and

WHEREAS, the applicant represents that, based on anticipated sales prices, the total diminution of revenue would equal approximately $12,900,000 for the seven-story mixed-use building and $2,200,000 for the townhouses; and

WHEREAS, further, the applicant states that the remaining townhouses would have to be redesigned to comply with the new maximum base height of 40 feet, which would be achieved by lowering the floor-to-ceiling heights, resulting in decreased sales prices for the townhouses and an economic loss of approximately $2,000,000; and

WHEREAS, the applicant further states that a full redesign of the seven-story mixed-use building would be required because the elimination of floor area on the upper floors would alter the unit mix of the project, thereby affecting the apartments on the lower floors; and

WHEREAS, the applicant represents that the redesign would result in $1,000,000 in additional architectural and engineering costs, and $1,878,000 in additional soft costs and carrying costs; and

WHEREAS, the Board agrees that the loss of one of the townhouses and the reduction in floor area of the seven-story mixed-use building, and the diminution in value because of the need to redesign, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 310153213-01-NB, 320023620-01-NB, 320023639-01-NB, 320023611-01-NB, 320029768-01-NB, 320029777-01-NB, 320037900-01-NB, 320031185-01-NB, 320022104-01-NB, 320020357-01-NB, 320020366-01-NB and 320020375-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, February 23, 2010.

64-07-A

APPLICANT – Stuart A. Klein, for Sidney Frankel, owner.

SUBJECT – Application September 14, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1704 Avenue N, southeast corner lot at the intersection of East 17th Street and Avenue N, Block 6755, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Ellen Messing.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 23, 2010, at 10 A.M., for decision, hearing closed.

57-09-A thru 158-09-A

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

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

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

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

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

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building's determination that the reconstruction of non-complying building must be done in accordance with §54-41and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

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

12-10-A

APPLICANT – Slater & Beckerman, LLP for Lex Rex, LLC, owner; Atlantic Commons Cornstone L.P., lessee.

SUBJECT – Application January 27, 2010 – Proposed construction of a five-story,18-unit residential building located within the 30 foot required setback of Eastern Parkway Extension, contrary to Administrative Code §18-112. R6 zoning district.

PREMISES AFFECTED – 1734 Saint John's Place, West side of Howard Avenue, south side of St. John's Place and north side of Eastern Parkway Extension. Block 1473, Lots 34, 35, 36, 37, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Stuart Beckerman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 23, 2010
1:30 P.M.

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

ZONING CALENDAR

247-09-BZ
CEQR #10-BSA-017M

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for expansion of the community house for the Central Synagogue (UG 4), contrary to floor area and height and setback regulations. (§§33-12, 81-211, 33-432). C5-2, C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael T. Sillerman and Samuel H. Lindenabum.

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 August 19, 2009, acting on Department of Buildings Application No. 120097849, reads, in pertinent part:

> "1. Proposed lot 10 building enlargement increases existing non-complying floor area by 7,129.62 sq. ft. and exceeds the maximum floor area ratios set forth in ZR 33-12 and ZR 81-211.
> 2. Proposed lot 10 building enlargement creates a non-compliance with height and setback regulations of ZR 33-432 of initial setback distance . . ."; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District (MiD), the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in the *City Record*, with continued hearings on

November 24, 2009 and January 12, 2010, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the owners of the building adjacent to the west (the "Townhouse" or "Townhouse Opposition"), provided testimony in opposition to the application, citing concerns about the potential and continued impact of the enlargement, construction associated with it, and the operations of the breakfast for the homeless program; and

WHEREAS, the owners of the building adjacent to the east (the "Hotel" or "Hotel Opposition"), provided testimony in opposition to the application, citing concerns about the potential and continued impact of the enlargement, construction associated with it, and the operations of the breakfast for the homeless program, as well as (1) opposition to the applicant's request for a waiver of the Board's Rules of Practice and Procedure § 1-03(g), (2) a request that the Board enforce the provisions of the Declaration of Restrictions and Zoning Lot Merger (the "Declaration"), and (3) a request that the Board compel the applicant to implement the Hotel's design revisions; and

WHEREAS, the opposition's concerns are discussed in more detail below; and

WHEREAS, this application was brought on behalf of Congregation Ahawath Chesed Shaar Hashomayim, also known as Central Synagogue (the "Synagogue") a not for profit religious institution; and

WHEREAS, the Synagogue's community house (the "Community House") occupies a tax lot (Tax Lot 10) (the "Community House Site"), which is part of a combined zoning lot that was created in 1981, pursuant to the Declaration, and includes Tax Lots 9, 12, and 63; and

WHEREAS, Tax Lot 9 is immediately to the west of the Community House and is occupied by the Townhouse; Tax Lot 12 is immediately to the east of the Community House and is occupied by the Hotel; and Tax Lot 63 is located to the north of the Community House, with frontage on East 56th Street, and is occupied by a commercial tower (the "Commercial Tower"); and

WHEREAS, the combined zoning lot is a through lot with frontage on East 55th Street and East 56th Street between Park Avenue and Lexington Avenue; the majority of the lot is within a C5-2 zoning district, with the easternmost ten feet (a portion of Tax Lot 12) within a C5-2.5 zoning district within the Special Midtown District (MiD); and

WHEREAS, the combined zoning lot has a lot area of 17,321.88 sq. ft. and the Community House Site has a lot area of 5,648.44 sq. ft.; and

WHEREAS, the Board recognizes that the tax lots have been merged into a single zoning lot, pursuant to the Declaration, and thus there is one owner representing each of the four included parcels; and

WHEREAS, accordingly, pursuant to the Board's Rules of Practice and Procedure § 1-03(g), the applicant must submit owner's authorization from all owners on the zoning lot; and

WHEREAS, the Synagogue provided owner's authorizations from the Townhouse and the Commercial Tower, but was unable to secure an authorization from the Hotel; and

WHEREAS, the Synagogue provided evidence that it (1) sought authorization to the application from all three owners, and (2) provided notification of the public hearing to all owners; and

WHEREAS, the applicant provided evidence of communication between the Synagogue and the Hotel regarding the application and the Hotel appeared at the public hearing, in opposition to the proposal; and

WHEREAS, in the absence of authorization from the Hotel, the Synagogue has requested a waiver of the Board's rule; and

WHEREAS, the Hotel Opposition argues that the waiver should not be granted in the absence of the Hotel's authorization because (1) prior Board actions on owner's authorization do not support the granting of a waiver, (2) the Board's Rules of Practice and Procedure do not contemplate it, and (3) the Board should not rely on the court's order in Said Rahmanpour v. the Board of Standards and Appeals, Index No. 028648/97 (Unreported Schmidt, J. Sup. Ct. Queens Co. 7 April 1998); and

WHEREAS, specifically, as to the prior Board actions, the Hotel Opposition cites to (1) the dismissal in BSA Cal. No. 826-86-BZ through 828-86-BZ (Grand Central Parkway) as evidence that the Board does not have jurisdiction over a case for which it does not have an owner's authorization and (2) the Board's decision in 240-06-BZ through 251-06-BZ (St. John's University) for the circumstances it should require when granting a waiver; and

WHEREAS, the Board distinguishes the facts in Grand Central Parkway and disagrees with the Hotel Opposition's analysis of St. John's University; and

WHEREAS, the Board notes that, as required by the Rules, initially the Grand Central Parkway site's owner provided authorization for an application brought by a lessee; the owner later withdrew its consent and the Board dismissed the case because the record no longer contained a valid owner's authorization for the site on which the discretionary relief was sought; and

WHEREAS, as to the St. John's University case, the Board acknowledges that it reviewed evidence of the location of the building on the zoning lot seeking the variance and its distance from the owners on the zoning lot who denied to provide authorization, but disagrees that such a factual finding is necessary for the Board to find that a waiver of the Rules is appropriate; the Board analyzed the variance request with the authorization from the owner of the site on which the discretionary relief was sought; and

WHEREAS, the Hotel Opposition asserts that the Board may only waive certain of its Rules, such as those related to an extension of time, but not of the requirement for owner's authorization; and

WHEREAS, the Board disagrees and notes that Rule § 1-

14(b) does not set forth any such limitation; it states, in pertinent part: "Waiver - Any section or subdivision of these Rules of Practice and Procedure may be waived in an individual matter at any public hearing by vote of the Board in conformance with §1-01(e) . . . "; and

WHEREAS, the Hotel Opposition further extrapolates that the intent of ZR § 12-10 – definition of "zoning lot," sub-section (f) and Rule § 1-03(g) are the same and therefore consent from all "parties of interest" is required; and

WHEREAS, the Board finds that the ZR is not applicable to the Board's authorization requirement and that the Hotel Opposition's argument is unavailing; and

WHEREAS, the Hotel Opposition states that the Board should not rely on Rahmanpour a mandamus, which originated from Board's initial rejection of a case (BSA Cal. No. 50-99-BZ) involving two adjacent lots, which had formerly been in common ownership, as the basis for its decision to grant the requested waiver; the application, in that case included consent from only the owner of the lot (or portion of the lot) on which the construction was proposed, but which the court ordered the Board to hear the variance application, in the absence of the second owner's authorization; and

WHEREAS, the Board notes that the Hotel Opposition introduced Rahmanpour into the record and that the court's mandamus, although it may actually support the granting of a waiver, is not the basis for the Board's decision; and

WHEREAS, the Board has determined that the spirit of the Rule, to provide notification to owners on the zoning lot and to require authorization from an owner whose site is the subject of discretionary relief, is maintained, even in the absence of the Hotel's authorization, because (1) the applicant sought authorization from all of the owners, in good faith; (2) all owners were notified of the application and kept abreast of the hearing schedule, in which two of them participated; (3) only the Community House Site was the subject of the requested discretionary relief as no construction was proposed for any of the other tax lots; and (4) pursuant to its Rule § 1-14(b), the Board may waive its own rules in appropriate circumstances; and

WHEREAS, the Synagogue's proposal is limited to the enlargement of its Community House, which it owns and operates; and

WHEREAS, accordingly, the request for a variance focuses on the Community House Site, but certain aspects of the combined zoning lot are discussed, when relevant; and

WHEREAS, the C5-2 portion of the zoning lot allows for a maximum FAR of 10 and the C5-2.5 (MiD) portion of the zoning lot allows for a maximum FAR of 12; the applicant notes that the zoning lot was formed prior to the creation of the Special Midtown District and the entire lot was zoned C6-6 (maximum FAR of 15) at the time of the zoning lot merger; and

WHEREAS, the combined zoning lot is developed with 260,361.25 sq. ft. of floor area (15 FAR), a legal pre-existing non-complying condition; the Community House Site is overbuilt, under the current zoning, by 6,346.3 sq. ft. (6.3 FAR); and

WHEREAS, the applicant represents that, the Synagogue anticipated future growth and preserved its right to transfer up to 10,000 sq. ft. of floor area from its historic synagogue sanctuary across East 55th Street, which would allow for two additional stories for the Community House; and

WHEREAS, the Synagogue now proposes to construct a two-story vertical enlargement to its existing nine-story Community House, which will result in an increase in floor area of 7,129.62 sq. ft. from 34,420.87 sq. ft. to 41,550 sq. ft.; and

WHEREAS, the Synagogue proposes to extrude the existing walls of the Community House to maintain a uniform footprint, which will extend the non-complying setback that begins at the seventh floor (an initial setback of 20 feet is required above the sixth floor); the existing and proposed Community House provides an initial setback of 15 feet; and

WHEREAS, the applicant initially also sought a waiver to the sky exposure plane regulations, but revised the design to eliminate the need for the waiver; and

WHEREAS, the applicant notes that the Community House is a nine-story building with two levels below grade, which was built in 1968; and

WHEREAS, the Synagogue represents that the existing configuration is inefficient and inadequate to meet the Synagogue's existing and future programmatic needs; and

WHEREAS, specifically, the Synagogue notes the following inefficiencies: (1) the auditorium in the sub-cellar and the low-ceilinged mechanical space above it are not well-designed and are not well-connected to the building's entrance; (2) the location of the existing building's core constrains circulation and results in small offices and classrooms; (3) the t-shaped hallways and the location of the elevators and other equipment result in classrooms that are spread out and not conducive to fostering interaction, even within a single floor; (4) the existing windows are small and inefficient; and (5) two stairwells occupy space that could be better used as windowed classrooms; and

WHEREAS, the applicant represents that the Synagogue's membership has increased from approximately 1,000 to approximately 6,000 members in the 40 years since the Community House was built; and

WHEREAS, accordingly, the Synagogue's staff has grown as have the offerings for community activities at every age level; and

WHEREAS, the Synagogue has begun to renovate portions of the existing building to address these concerns, but requires additional floor area to accommodate its programmatic needs and continued growth; and

WHEREAS, the applicant sets forth the following programmatic needs of the Synagogue: (1) an indoor recreation room for nursery school children; (2) a common floor to accommodate teachers' offices; (3) a space for parents to wait while retrieving children; (4) a space for teenage congregants; (5) a full floor for clergy members, located between the religious school classrooms on floors 6-8 and the adult education floors 10-11; and (6) permanent space dedicated to adult education; and

WHEREAS, the applicant states that the Community House's footprint is small and inefficient, which requires

vertical stacking of a program that would benefit from the horizontal integration of space; and

WHEREAS, the applicant represents that the noted programmatic needs cannot be accommodated in the existing amount of floor area and that two additional floors are required; and

WHEREAS, additionally, the applicant notes that the Synagogue's sanctuary is across the street and that adjacency to it is essential, thus enlargement of the existing building furthers that goal; and

WHEREAS, the program of the proposed Community House is as follows: cellar and sub-cellar – banquet/lecture room, community hall, kitchen, storage, and mechanical space; first floor – chapel, study, and lobby; second and third floors – nursery school classrooms and play roof; fourth floor – library and music room; fifth school offices; and sixth through eighth floors – religious school classrooms; ninth floor – clergy offices; tenth and eleventh floors – adult school and lounge; and rooftop – play area and mechanical space; and

WHEREAS, the applicant represents that the complying alternative, which would involve the renovation of the existing building without increasing the floor area would not allow for enough space to accommodate its programming; and

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

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

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

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

WHEREAS, the applicant represents that the proposed Community House 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 neighborhood is composed of a mix of uses including commercial office, retail, hotel, residential, and institutions; and

WHEREAS, the applicant notes that the proposal maintains the existing use, which has existed at the site for more than 40 years; and

WHEREAS, the applicant represents that the proposal complies with all zoning regulations except floor area and initial setback and that the two new floors will fit within the footprint of the floors below, maintaining the streetwall; and

WHEREAS, as to bulk, the applicant notes that the site is located in a high density Midtown area with high-rise buildings found along both sides of Park Avenue and Lexington Avenue, many with commercial office use and ground-floor retail; the mid-blocks are occupied by a variety of building forms and uses, including high-rise buildings and older low-rise buildings; and

WHEREAS, the applicant notes that the subject block has a mix of uses, building forms, and architectural styles; and

WHEREAS, the Community House is located adjacent to the 36-story Hotel building and the 33-story Commercial Tower; and

WHEREAS, the applicant notes that the enlargement will result in an increase in the height of the Community House by 22.67 feet for a total height of 130 feet to the top of the roof; and

WHEREAS, the Townhouse Opposition cited the following primary concerns about the Community House's potential impact on the adjacent site to the west: (1) the lack of compatibility of the breakfast for the homeless program and, thus, the request that the entrance to the breakfast program not be located to the west, adjacent to the Townhouse; (2) the diminution of privacy on the adjacent to a residential unit in the Townhouse due to adjacent windows; and (3) the potential impact of construction on the Townhouse; and

WHEREAS, in addition to the concern related to the enforcement of the Declaration, which will be discussed below, the Hotel Opposition also raised the following primary concerns about the compatibility of the Community House with the Hotel: (1) the proposed play roof enclosure blocks existing hotel windows on the western wall of the 16th and 17th floors of the Hotel, and affects the view on the 18th floor; (2) the proposed play roof enclosure blocks the right to install windows that would open on the western wall of the 16th, 17th, and 18th floors of the Hotel; (3) the height of the play roof enclosure should be limited to ten feet; (4) the proposed bulkhead would block the right to install windows along a portion of the western facing wall of the 16th floor of the Hotel, and thus should be moved to the eastern side of the roof; and (5) the entrance for the breakfast program should be located to the west of the Synagogue's entrance, away from the Hotel entrance; (6) the hours of the use of the play roof should be limited; and (7) the potential impact of construction on the Hotel; and

WHEREAS, as to the Townhouse, the Synagogue has agreed to add a window with obscured glass to the wall adjacent to the Townhouse's fourth and fifth floor residential unit; and

WHEREAS, the Board notes that the Townhouse Opposition provided an owner's authorization form authorizing the Synagogue's pursuit of the subject application; and

WHEREAS, in response to the common concerns about the location of the entrance to the breakfast program, the applicant notes that the Synagogue's programmatic need requires a separate entrance from the main entrance to the Community House and the proposed entrance conforms with the overall building plan; and

WHEREAS, the Board notes that the Community House is located in a dense commercial district in Midtown with a mix of uses and that the Synagogue and its breakfast program are longstanding as-of-right uses in the zoning district;

accordingly, the Board finds the opposition's arguments to limit the use to be unavailing; and

WHEREAS, in response to the common concerns about construction, the applicant notes, and the Board agrees, that construction of this nature is performed routinely throughout New York City and the construction of the enlargement will be completed in compliance with all Building Code and other relevant regulations; and

WHEREAS, as to the Hotel's concerns, the Synagogue (1) has set the proposed play area back three feet from the eastern lot line to allow for the Hotel's windows on its western wall to be operable; (2) asserts that the play roof enclosure is a permitted obstruction and its dimensions will be reviewed and approved by DOB; (3) asserts that the location of the bulkhead cannot be relocated due to the Synagogue's programmatic needs and layout of the building; and

WHEREAS, finally, the Hotel Opposition asserts that the Board should follow its decision in BSA Cal. No. 240-03-BZ and require the Synagogue to establish an agreement with its neighbors regarding site conditions; and

WHEREAS, the Board disagrees, in part, because the cited case is distinguishable in that the proposed synagogue in that case was located within a low density residential zoning district occupied by residential uses; the Board notes that a variety of uses could occupy the Community House Site as-of-right, without any requirement for mitigating conditions; and

WHEREAS, the Board has determined that the proposal, with the noted revisions, is driven by the Synagogue's programmatic needs and that, the use remains the same except for the enlargement of two floors, which will be compatible with the adjacent uses; and

WHEREAS, specifically, as to the Hotel, the Board notes that the non-complying floor area and height and setback does not block any windows and that a side setback of the play area retains sufficient space for window openings and does not prohibit the installation of new windows in the future; additionally, the proposed use of the roof top as a play area is as-of-right in the zoning district; and

WHEREAS, the Synagogue represents that the proposed roof top enclosure is a permitted obstruction and no waivers are sought for it, which is proposed to reach a peak of 24'-11" as reflected on the plans; and

WHEREAS, the Board notes that DOB will review and approve the parameters of the roof top enclosure for compliance with zoning and all other relevant regulation; and

WHEREAS, the Board notes that the majority of the opposition's concerns do not relate to the requested floor area and setback waivers, but rather to general conditions of the site; 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 Hotel Opposition additionally asserts that the Board cannot disregard the terms of the Declaration and should not approve a variance request, which the Hotel Opposition believes conflicts with the Declaration; and

WHEREAS, the Hotel Opposition asserts that the proposal fails to comply with limitations set forth in the Declaration regarding the Hotel's rights to install windows and maintain the operation of existing ones on its western wall; the Hotel Opposition also noted a prohibition on encroachment into the sky exposure plane, which the applicant no longer seeks; and

WHEREAS, as to the Declaration, the Synagogue cites to New York State case law in support of the position that an agency need not consider an applicant's private agreements in granting or denying a zoning approval; and

WHEREAS, the Synagogue 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 rule cited in 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, the Board agrees 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

WHEREAS, the Board 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 notes that certain of the Declaration's provisions appear to conflict, resulting in ambiguity in the text, and it does not agree with the Hotel Opposition that this is the appropriate forum for resolving such conflicts; and

WHEREAS, accordingly, the Board recognizes that the Declaration was the vehicle to establish the subject merged zoning lot but it has determined that the analysis for the variance is independent of the Declaration's bulk-related provisions and has reviewed the proposal pursuant to the findings set forth in the ZR, rather than the private agreement; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the existing building on the zoning lot and the programmatic needs of the Synagogue; and

WHEREAS, as to the minimum variance, the Board notes that the applicant eliminated the request to waive the sky exposure plane regulations and that the current request is limited to the initial setback waiver, which allows for the extrusion of the existing front wall (an encroachment of five feet on the tenth and eleventh floors) and two additional floors of floor area; and

WHEREAS, accordingly, the Board finds that this proposal reflects the minimum variance required to afford the

owner relief, since the Community House is designed to address the Synagogue's present programmatic needs, which have been clearly established in the record; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 10BSA137M, dated August 25, 2009; and

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

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District, the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; *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 "February 18, 2010"- twenty eight (28) sheets; and *on further condition*:

THAT the Community House parameters shall not exceed those reflected on the BSA-approved plans for the Community House Site, including a maximum floor area of 41,550 sq. ft. and a maximum height of 130 feet;

THAT DOB will review and approve the parameters of the roof top enclosure for compliance with zoning and all other relevant regulation;

THAT any change in the use, occupancy, or operator of the Building requires review and approval by the Board;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

248-09-BZ
CEQR #10-BSA-018X
APPLICANT – Sheldon Lobel, P.C., for Leemilt's Petroleum, Incorporated, owner.
SUBJECT – Application August 26, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of an automotive service station (UG16) which expired on July 24, 1991; Amendment to modify layout of the site; and Waiver of the Rules. R6 zoning district.
PREMISES AFFECTED – 3031 Bailey Avenue, northwest corner of Bailey Avenue and Albany Court, Block 3266, Lot 85, Borough of The Bronx.
COMMUNITY BOARD #8BX
APPEARANCES –
For Applicant: Josh Rhinesmith.
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 Bronx Borough Commissioner, dated August 21, 2009, acting on Department of Buildings Application No. 220016578, reads in pertinent part:

"ZR 22-00. Proposed automotive service station in R6 zoning dist. is not permitted as per the stated section of the code.
Existing certificate of occupancy and application expired by limitation, renewal of BSA 871-60-BZ from Board of Standards and Appeals;" and

WHEREAS, this is an application for a waiver of the

Rules of Practice and Procedure, a reinstatement of a prior Board approval to permit the operation of an automobile service station with accessory uses (Use Group 16) in an R6 zoning district pursuant to ZR §§ 11-411, and minor modifications to the previously-approved plans pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on January 26, 2010, after due notice by publication in the *City Record*, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the northwest corner of Bailey Avenue and Albany Crescent, within an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 1961 when, under BSA Cal. No. 871-60-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, car wash, lubritorium, sales room, office, minor repairs with hand tools only, storage of more than five motor vehicles, and New York State Inspection station, for a term of 20 years; and

WHEREAS, most recently, on May 18, 1982, under BSA Cal. No. 871-60-BZ, the grant was amended to extend the term for ten years; and

WHEREAS, the term of the variance has not been extended since its expiration on July 25, 1991, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, additionally, the applicant notes that a temporary order of closure associated with the sale of un-taxed merchandise was being resolved quickly and did not implicate the continuous use status; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also seeks to amend the grant to approve site conditions that do not conform with previously approved plans, to reflect: (i) the removal and relocation of oil and underground storage tanks for motor fuel; and (ii) the replacement of the single fuel dispenser island with two smaller islands; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted photographs, revised plans and a revised signage analysis reflecting the removal of the shed structure located in the northwest corner of the premises and any excess signage related to the tire repair business from the site; and

WHEREAS, the applicant states that tire repair services will now take place within the existing enclosed building; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval of an automobile service station with accessory uses (UG 16) and for a legalization to permit modifications to the site, within an R6 zoning district, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 15, 2009"-(5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on February 23, 2020;

THAT the lot shall be kept free of graffiti, dirt and debris;

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

THAT a new certificate of occupancy be obtained by August 23, 2010;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

253-09-BZ
CEQR #10-BSA-020Q
APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.
SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless telecommunications facility on roof of existing building. R4 zoning district.
PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.
COMMUNITY BOARD #5Q
APPEARANCES –
For Applicant: John Coughlin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated August 4, 2009, acting on Department of Buildings Application No. 420024869, reads in pertinent part:

> "Proposed telecommunications facility exceeds 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of NYC Zoning Resolution;" and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of six panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on December 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 2, 2010, and then to decision on February 23, 2010; and

WHEREAS, Community Board 5, Queens, recommends disapproval of this application, citing concerns with the number of existing and proposed antennas on the roof of the subject building, and with the potential impacts of the proposal on neighborhood character and health; and

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

WHEREAS, several neighborhood residents provided testimony in opposition to this application (hereinafter, the "Opposition"), citing the following primary concerns: (i) the potential health risks associated with radio frequency emissions from the facility; (ii) the roof is in poor condition and cannot support additional antennas; (iii) the site is already overloaded with antennas and alternate sites have not been considered; and (iv) the wires and equipment from the existing telecommunications facilities hampered Fire Department access during a recent fire, and the wires and equipment from the proposed facility will further interfere with future Fire Department access on the roof; and

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

WHEREAS, the subject site is currently occupied by a six-story residential building; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the six-story residential building, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) six panel antennas mounted to the building's parapet walls and to existing roof and ceiling structures, and extending to a maximum height of six feet above the parapet; (ii) two new equipment cabinets, which will be located in an existing equipment room in the cellar of the proposed building; and (iii) coaxial cables routed from the equipment room to the roof via an enclosed cable tray; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds "that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;" and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, however, the applicant states that the transmissions from the facility are well below the limits set by the Federal Communications Commission, in accordance with federal law; and

WHEREAS, as to the Opposition's concerns about the condition of the roof, the applicant submitted an architectural report stating that the proposal will comply with the Building Code and that the building is structurally adequate to support the proposed telecommunications facility; and

WHEREAS, as to the Opposition's assertion that the applicant must identify alternate locations, the Board notes that there is no such requirement for this special permit; and

WHEREAS, as to the Opposition's concerns about the facility's equipment and wires hampering Fire Department access, the applicant states that the facility is designed to comply with both the Building Code and the Fire Code, and the wires running between the equipment room and the antennas will be within a cable tray running up the side of the building, and therefore will not be exposed; and

WHEREAS, a representative of the Fire Department testified at hearing that the site has been inspected and while some of the existing telecommunications equipment on the

roof is being relocated to prevent future interference with Fire Department access, the Fire Department has no objection to the current application; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, 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 finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10-BSA-140Q, dated September 4, 2009; and

WHEREAS, the EAS documents show 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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 23, 2009"-(9) sheets; 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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 23, 2010.

264-09-BZ
CEQR #10-BSA-021K
APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.
SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building. C4-4A zoning district.
PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Tzvi Friedman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 4, 2009, acting on Department of Buildings Application No. 300333878, reads in pertinent part:

> "Physical culture establishment in a C4-4A zoning district is contrary to Zoning Resolution § 32-10 and therefore must be referred to the Board of Standards and Appeals and requires a special permit from the BSA as per § 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the legalization of a physical culture establishment (PCE) on the second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 23,

2010; and

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

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

WHEREAS, the subject site is located on the north side of Flatbush Avenue, between Snyder Avenue and Church Avenue, in a C4-4A zoning district; and

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

WHEREAS, the PCE has a total floor area of 12,052 sq. ft. on the second and third floors; and

WHEREAS, the PCE is operated as Lucille Roberts Women's Fitness Club; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 9:00 a.m. to 9:00 p.m.; Friday, from 9:00 a.m. to 8:00 p.m.; Saturday, from 9:00 a.m. to 2:00 p.m.; and Sunday, from 10:00 a.m. to 2:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since 1998, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be limited to two years from the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.10BSA018K, dated May 5, 2009; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the legalization of a physical culture establishment on the second and third floors of an existing three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 19, 2009"-Nine (9) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 23, 2012;

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

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

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

THAT DOB shall review and approve the site, including the access lift, for compliance with Local Law 58/87 and any other related regulations;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

281-09-BZ
CEQR #10-BSA-023M
APPLICANT – Marcie Kesner, Kramer Levin Naftalis & Frankel LLP, for Bayrock/Sapir Organization LLC, owner; WTS International, Incorporated, lessee.
SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*WTS International*) on the fifth and sixth floors in a recently constructed building. M1-6 zoning district.
PREMISES AFFECTED – 246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street. Block 491, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #2M
APPEARANCES –
For Applicant: Marcie Kesner.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 10, 2009, acting on Department of Buildings Application No. 104403334, reads in pertinent part:

> "ZR 42-31. Proposed physical culture establishment at 5th and 6th floor is not permitted as of right and requires BSA special permit pursuant to ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, a physical culture establishment (PCE) on the fifth and sixth floors of a 43-story mixed-use hotel/commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 26, 2010 after due notice by publication in *The City Record*, and then to decision on February 23, 2010; and

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

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

WHEREAS, the subject site is located on a through lot bounded by Spring Street to the north, Varick Street to the west, and Dominick Street to the south, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a 43-story mixed-use hotel/commercial building; and

WHEREAS, the PCE will have a total floor area of 9,155.5 sq. ft. on the fifth and sixth floors; and

WHEREAS, the PCE will be operated as WTS International; and

WHEREAS, the proposed hours of operation are 7:00 a.m. to 8:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; and

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 10BSA023M, dated January 5, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, a physical culture establishment on the fifth and sixth floors of 43-story hotel/commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially

conform to drawings filed with this application marked "January 8, 2010"- Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 23, 2020;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 23, 2010.

293-09-BZ

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.
SUBJECT – Application October 15, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to open space and floor area (§23-141(a)). R-2 zoning district.
PREMISES AFFECTED – 2501 Avenue M, northeast corner of Avenue M and Bedford Avenue, Block 7643, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 25, 2009, acting on Department of Buildings Application No. 3209337, reads:

"1. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.

2. Proposed plans are contrary to Z.R. 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%;" and

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

WHEREAS, a public hearing was held on this application on December 8, 2009 after due notice by publication in *The City Record*, with a continued hearing on January 26, 2010, and then to decision on February 23, 2010; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, with conditions related to the location of the garage and the proximity of open porches to the property line; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue M and Bedford Avenue, in an R2 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 3,321 sq. ft. (0.55 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,321 sq. ft. (0.55 FAR) to 6,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 60 percent (150 percent is the minimum required); and

WHEREAS, at hearing the Board requested that the applicant identify which portions of the original home are being retained, and which portions of the attic are being included in floor area calculations; and

WHEREAS, in response, the applicant submitted revised plans showing the portions of the home that are being retained and reflecting the portions of the attic which are included in floor area calculations; and

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

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

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

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 12, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,000 sq. ft. (1.0 FAR); an open space ratio of 60 percent; a front yard with a depth of 15'-0" along the southern lot line; a front yard with a depth of 15'-0" along the western lot line; a side yard with a width of 5'-0" along the eastern lot line; a side yard with a width of 21'-7" along the northern lot line; and a total height of 22'-7", 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, February 23, 2010.

29-09-BZ

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

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

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

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

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

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) to reinstate previously granted variance which expired on December 7, 1999; amendment to change use from a gasoline service station (UG16B) to automotive repair establishment (UG16B); Waiver of the Boards Rules. C1-3/R6A & R5B (Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

294-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, for Shree Ram FLP, owner.

SUBJECT – Application October 16, 2009 – Special Permit (§73-125) to legalize a one-story ambulatory diagnostic and treatment health care facility. R3A zoning district.

PREMISES AFFECTED – 3768 Richmond Avenue, west side of Richmond Avenue, 200' south of the intersection with Petrus Avenue, Block 5595, Lot 11, Borough of Staten

Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

297-09-BZ

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

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

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

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner, Jack Freeman, David Suapz, D Josh tupper, Ken Rockwood, Joseph Dvir, Debra Weiner and Benjamin Giardull.

For Opposition: Isabel Rodriguez, David Rosenberc and Linda Brelik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

328-09-BZ

APPLICANT – Bryan Cave LLP, for The Abraham Joshua Heschel School, owner.

SUBJECT – Application December 14, 2009 – Variance (§72-21) to allow for the construction of a community facility (*The Abraham Joshua Heschel School*), contrary to height and setback, and rear yard requirements. (§§33-432, 23-634, 33-432). C6-2/C4-7 zoning districts.

PREMISES AFFECTED – 28-34 West End Avenue, 246-252 West 61st Street, West End Avenue and West 61st Street, Block 1152, Lot 58, 61, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter, Alisa Doctoroff, Scott Keller.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

330-09-BZ

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

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

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

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 13, 2010, at 1:30 P.M., for continued hearing.

332-09-BZ

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

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

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

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

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

Jeff Mulligan, Executive Director

Adjourned: P.M.