
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 96, No. 12

March 23, 2011

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Affecting Calendar Numbers:

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DOCKET

New Case Filed Up to March 15, 2010

25-11-BZ

760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue., Block 4828, Lot(s) 22, Borough of **Brooklyn, Community Board: 9**. Variance (72-21) to permit the enlargement of an existing medical research facility (Downstate Advanced Biotechnology Incubator), contrary to floor area (ZR 43-10), height and setback (ZR 43-20), required parking (ZR 43-21), parking space dimensions (ZR 4 M1-1 district).

26-11-BZ

12 East 18th Street, Southside between Fifth Avenue & Broadway., Block 846, Lot(s) 67, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment. M1-5M district.

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

CALENDAR

APRIL 5, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 5, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

435-74-BZ

APPLICANT – Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; an Amendment to legalize the interior layout which resulted in the increase in the number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07' southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application February 28, 2011 – Extension of Time to complete construction for a previously granted Special Permit (§73-44) to permit a retail, community facility and office development with less than the required parking which expired on March 20, 2011. C4-2 zoning district.

PREMISES AFFECTED – 133-47 39th Avenue, between Price Street and College Point Boulevard, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

221-10-A

APPLICANT – Robert W. Cunningham, R.A., for Robert W. Cunningham, owner.

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APRIL 5, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 5, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two story commercial building, contrary to use regulations ZR §22-10. R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

CALENDAR

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (ZR (§42-00), rear yard equivalent (ZR §43-28), height (ZR (§43-43), tower regulations (ZR §43-45) and parking (ZR §13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*) in a C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 15, 2011
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

899-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Rengency Towers,
LLC, owner.

SUBJECT – Application December 3, 2010 – Extension of
Term permitting 75 surplus tenant parking spaces, within an
accessory garage, for transient parking pursuant to §60 (3)
of the Multiple Dwelling Law (MDL), which expired on
November 16, 2010. C2-8/R8B zoning district.

PREMISES AFFECTED – 231-245 East 63rd Street, aka
1201-1222 2nd Avenue. Located along the entire west block
front of Second Avenue between 63rd and 64th Streets.
Block 1418, Lot 21. Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of the term for a previously granted variance
for a transient parking garage, which expired on November
16, 2010; and

WHEREAS, a public hearing was held on this
application on February 8, 2011, after due notice by
publication in *The City Record*, and then to decision on
March 15, 2011; and

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

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

WHEREAS, the subject premises is located on a through
lot bounded by East 63rd Street to the south, Second Avenue to
the east, and East 64th Street to the north, partially within an
R8B zoning district and partially within a C2-8 zoning district;
and

WHEREAS, the site is occupied by a 34-story mixed-use
commercial/residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a
224-space accessory garage, with 97 spaces in the cellar and
127 spaces in the sub-cellar; and

WHEREAS, on November 16, 1965, 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 75 surplus parking spaces to be used for
transient parking, for a term of 15 years; and

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

WHEREAS, most recently, on February 27, 2001, the
Board granted a ten-year extension of term, which expired on
November 16, 2010; and

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

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

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution having been
adopted on November 16, 1965, so that, as amended, this
portion of the resolution shall read: “to permit the extension of
the term of the grant for an additional ten years from November
16, 2010, to expire on November 16, 2020; *on condition* that
all work shall substantially conform to drawings filed with this
application and marked ‘Received December 3, 2010’-(4)
sheets; and *on further condition*:

THAT this term shall expire on November 16, 2020;

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. No. 368/1976)

Adopted by the Board of Standards and Appeals, March
15, 2011.

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172-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Samson Associates LLC, owner; TSI West 14 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application November 10, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 13, 2009; Waiver of the Rules. C6-2M/C6-2 zoning district.

PREMISES AFFECTED – 34-42 West 14th Street, south side of West 14th Street, between Fifth Avenue and Sixth Avenue, Block 577, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

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, and an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on August 3, 2009; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

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

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

WHEREAS, the PCE is located on the south side of West 14th Street, between Fifth Avenue and Sixth Avenue, partially within a C6-2 zoning district and partially within a C6-2M zoning district; and

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

WHEREAS, the PCE occupies a total of 26,240 sq. ft. of floor area on the first and second floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 1, 2000 when, under the subject calendar number, the Board granted a special permit to legalize the use of a PCE in the subject building for a term of ten years, to expire on August 3, 2009; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens

and amends the resolution, as adopted on February 1, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from August 3, 2009, to expire on August 3, 2019, on condition that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and on further condition:

THAT the term of this grant shall expire on August 3, 2019;

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

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. 102101011)

Adopted by the Board of Standards and Appeals, March 15, 2011.

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.

SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted variance to permit the operation of a gasoline service station, and an amendment to legalize the existing curb cut conditions; and

WHEREAS, a public hearing was held on this application on December 7, 2010 after due notice by publication in *The City Record*, with continued hearings on January 25, 2011 and February 15, 2011, and then to decision on March 15, 2011; and

WHEREAS, Community Board 3, Brooklyn, states that it has no objection to this application; and

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

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and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northwest corner of Malcolm X Boulevard and Dekalb Avenue, within a C2-3 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1955 when, under BSA Cal. No. 178-41-BZ vol. II, the Board granted a variance to permit the use of the subject premises as a gasoline service station; and

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

WHEREAS, most recently, on July 25, 2000, under the subject calendar number, the Board granted the reestablishment of the expired variance for a gasoline service station, and permitted the legalization of the conversion of a service bay to a convenience store/sales and storage area, and the installation of a canopy for a term of ten years, which expired July 25, 2010; and

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

WHEREAS, the applicant also requests an amendment to legalize an increase in the width of the two curb cuts located on Dekalb Avenue from their approved width of 25 feet to their current width of 28 feet; and

WHEREAS, at hearing, the Board raised concerns about the amount of signage located on the site; and

WHEREAS, in response, the applicant states that the signage on the site was modified since the Board's prior grant due to a change in operator of the site, and submitted photographs reflecting the removal of excess signage and sign posts at the site, and a revised signage analysis reflecting that the signage on the site complies with C2 district regulations; and

WHEREAS, at hearing, the Board also requested that the applicant clarify the site's hours of operation and directed the applicant to provide landscaping on the site; and

WHEREAS, in response, the applicant states that the gasoline sales at the site operates 24 hours per day, seven days per week, and the hours of operation of the repair facility are Monday through Saturday, from 7:00 a.m. to 6:30 p.m., and closed on Sunday; and

WHEREAS, the applicant also submitted revised plans reflecting that the planting strip along the northerly lot line will be restored, and states that new shrubs will be planted and replaced whenever necessary; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previously-approved variance are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 25, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from July 25, 2010, to expire July 25, 2020, and to permit the noted amendment to the site plan; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received February 4, 2011'-(5) sheets; and *on further*

condition:

THAT the term of this grant shall expire on July 25, 2020;

THAT all signage shall comply with C2 zoning regulations;

THAT landscaping shall be provided and maintained in accordance with the BSA-approved plans;

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

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)/configuration(s) not related to the relief granted." (DOB App. No. 320103721)

Adopted by the Board of Standards and Appeals, March 15, 2011.

259-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 26 Court Associates, LLC, owner; TSI Court Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application January 25, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expires on February 6, 2011. C5-2A (DB) zoning district.

PREMISES AFFECTED – 26 Court Street, northwest corner of Court Street and Remsen Street, Block 250, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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 reopening, an extension of term of a previously granted special permit for a physical culture establishment ("PCE"), which expired on July 25, 2010, and an amendment to the hours of operation of the PCE; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 15, 2011, and then to decision on March 15, 2011; and

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

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Hinkson; and

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

WHEREAS, the PCE is located on the northwest corner of Court Street and Remsen Street, in a C5-2A zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the subject site is occupied by a 28-story commercial building; and

WHEREAS, the PCE occupies a total of 8,893 sq. ft. of floor area in portions of the first floor, mezzanine and second floor, with an additional 7,991 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2001 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 6, 2011; and

WHEREAS, most recently, on June 17, 2003, the Board granted an amendment to permit the expansion of the second floor of the existing PCE; and

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

WHEREAS, the applicant also requests an amendment to the hours of operation of the PCE; and

WHEREAS, the previously-approved hours of operation for the PCE are: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on February 6, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from February 6, 2011, to expire on February 6, 2021, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on February 6, 2021;

THAT the hours of operation of the PCE shall be: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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

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. 301079696)

Adopted by the Board of Standards and Appeals, March 15, 2011.

259-08-BZ

APPLICANT – Jeffrey A. Chester/Einbinder & Dunn, for AAC Douglaston Plaza, LLC, owner; Fairway Douglaston LLC, lessee.

SUBJECT – Application October 18, 2010 – Amendment of a variance (§72-21) permitting the expansion of a non-conforming supermarket (UG 6). The amendment would remove a condition limiting the signage to C1 regulations. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

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 an amendment to a previously approved variance for the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6); and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

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

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

WHEREAS, the subject site is located within an R4 zoning district on a lot bordered on the west by Douglaston Parkway and on the north by 61st Avenue; and

WHEREAS, the site is an irregularly shaped lot with a lot area of approximately 540,023 sq. ft.; and

WHEREAS, the site is occupied by the Douglaston Plaza Shopping Mall, a three-level shopping mall with 297,516 sq. ft. of floor area; and

WHEREAS, the site slopes steeply down along Douglaston Parkway from its northern border along 61st Avenue; accordingly, the shopping center is built on three levels (first floor, cellar, and sub-cellar) and is occupied by four free-standing buildings with eight retail tenants); and

WHEREAS, the applicant states that the shopping center was built in approximately 1961 and was approved pursuant to

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the 1916 Zoning Resolution and is thus a pre-existing non-conforming use within the subject R4 zoning district; and

WHEREAS, however, due to a prior change in use from the pre-existing non-conforming use to another non-conforming use, a portion of the site is the subject of a Board grant; and

WHEREAS, on January 4, 1983, under BSA Cal. No. 370-82-BZ, the Board granted a variance to permit the conversion of retail space to a seven-theater multiplex cinema (Use Group 8) to occupy the largest building at the site; and

WHEREAS, on July 14, 2009, under the subject calendar number, the Board granted a variance to permit the enlargement of the pre-existing non-conforming sub-cellar building occupied by a supermarket (the "Supermarket Building") (Use Group 6); and

WHEREAS, the applicant now seeks an amendment to permit an increase in signage for the Supermarket Building from what was approved under the Board's prior grant; and

WHEREAS, specifically, a condition of the Board's grant stipulated that all signage on the site must comply with C1 district signage regulations; and

WHEREAS, the applicant states that restricting the signage to C1 district regulations would limit the Supermarket Building to 150 sq. ft. of signage for each frontage, or a total of 300 sq. ft.; and

WHEREAS, the applicant represents that this amount of signage is inadequate for a supermarket with more than 57,000 sq. ft. of floor area; and

WHEREAS, the applicant represents that supermarkets similar in size to the subject building typically have significantly more signage than that approved for the subject building, and states that the two nearest regional shopping centers (the Bay Terrace shopping center and the Glen Oaks shopping center) both have C4-1 zoning designations; and

WHEREAS, the applicant further states that the unique topography of the site results in limited site lines and street visibility because the decked parking level above the lowest level creates very limited retail visibility, necessitating additional signage beyond what is permitted in C1 zoning districts; and

WHEREAS, the applicant submitted revised plans to the Board reflecting a total of 916 sq. ft. of signage on the site, which includes: (1) 295 sq. ft. of signage on the front façade of the supermarket; (2) 81-95 sq. ft. of signage on all four sides of the proposed elevator at the cellar level, which will identify access to the store from anywhere on the cellar level and draw more vehicles to the less utilized cellar level parking; and (3) four free standing signs along the Douglaston Parkway entrances to the site; and

WHEREAS, accordingly, the applicant requests that the Board waive the condition from the previous resolution that limited signage for the Supermarket Building to C1 district regulations, and approve the signage as illustrated in the revised plans submitted to the Board; and

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

Therefore it is Resolved that the Board of Standards and

Appeals reopens and amends the resolution, as adopted on July 14, 2009, so that as amended this portion of the resolution shall read: "to modify the amount of signage permitted on the site, in accordance with the BSA-approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received January 10, 2011"--(8) sheets; and *on further condition*:

THAT signage shall be as shown on the BSA-approved plans;

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)/configuration(s) not related to the relief granted." (DOB Application No. 410156361)

Adopted by the Board of Standards and Appeals, March 15, 2011.

881-59-BZ

APPLICANT – Dorothy Ames, owner.
SUBJECT – Application November 19, 2010 – Extension of Term (§11-411) for the continued use of a theatre (*Soho Playhouse*) which expires on April 11, 2011. R6 zoning district.

PREMISES AFFECTED – 15 Vandam Street, between Avenue of the Americas and Varick Street, Block 506, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John Johnson.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a bulk variance (§72-21) for a building occupied by a Physical Culture Establishment (*The Sports Club/LA*). The amendment proposes an increase in PCE floor area and a change operator; Extension of Term which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; and Waiver of the Rules. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street aka 328 East

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61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jonathan Grippo.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25’ south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Amendment to a special permit (§73-125) to enlarge UG4 medical offices within the cellar of an existing four-story residential building. R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

11-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 601 Associates LLC, owner; Harbor Fitness Park Slope Incorporated, lessee.

SUBJECT – Application November 3, 2010 – Extension of Term of a Special Permit (§73-36) for a Physical Culture Establishment (*Harbor Fitness*) in the cellar and first floor of an existing mixed use building which expired on October 3, 2010; Amendment for increase in hours of operation. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 5th Avenue, northwest corner of 5th Avenue and 15th Street, Block 1041, Lot 43(1001), Borough of Bronx.

COMMUNITY BOARD #7BX

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for postponed hearing.

289-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 160 Water Street Associates, owner; TSI Water Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 29, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Cultural Establishment (*New York Sports Club*) which expires on March 6, 2011. C5-5 (LM) zoning district.

PREMISES AFFECTED – 160 Water Street, northwest corner of Water Street and Fletcher Street, Block 70, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

197-02-BZ

APPLICANT – Gary Silver Architects, for Nostrand Kings Management, owner; No Limit LLC, lessee.

SUBJECT – Application November 9, 2010 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment which expired on November 26, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, East side of Nostrand Avenue 129.14 feet south of the corner of Kings Highway. Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Gary Silver.

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 29, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

201-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 1, 2011, and then to decision on March 15, 2011; and

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

Commissioner Ottley-Brown; and

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 24-story hotel building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 154,519.6 sq. ft.; and

WHEREAS, the applicant notes that the Building will contain an accessory underground parking garage, retail stores on the lower levels, and approximately 246 hotel rooms; and

WHEREAS, the applicant states that the owner has also filed an application with the City Planning Commission ("CPC") requesting a special permit pursuant to ZR § 74-52, to allow the underground parking garage at the site to be made available for public use; and

WHEREAS, the applicant represents that the proposed CPC special permit for the garage has no effect on the subject proposal and that the plans for the garage, as approved by the Department of Buildings ("DOB"), have not changed; and

WHEREAS, the development complies with the former C6-1 zoning district parameters; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

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

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

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

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

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

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

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

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

WHEREAS, by letter dated February 1, 2011, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

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

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

WHEREAS, the Board further notes that any work

performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, footings and foundation; 100 percent of the underground parking garage and cellar levels; and 100 percent of the first and second floor retail space; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the Permit; an affidavit from the owner enumerating the completed work; copies of cancelled checks evidencing payments made by the applicant; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before November 19, 2010; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$12,859,975, or approximately 18 percent of the \$70,000,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted accounting tables and copies of cancelled checks; and

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 104297850-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 15, 2013.

Adopted by the Board of Standards and Appeals, March 15, 2011.

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214-10-A

APPLICANT – Carol E. Rosenthal, Esq./Fried Frank, for Boulevard Leasing Limited Partnership, owner.

SUBJECT – Application November 10, 2010 – Appeal challenging the Department of Buildings determination regarding maximum number of dwelling units (§23-22) allowed in a residential conversion of an existing building. C4-2 zoning district.

PREMISES AFFECTED – 97-45 Queens Boulevard, bounded by Queens Boulevard, 64th Road and 64th Avenue, Block 2091, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

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 subject appeal comes before the Board in response to a Final Determination dated October 12, 2010 by the Queens Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application Nos. 40222139 and 420038890; and

WHEREAS, the Final Determination states, in pertinent part:

Request to accept the proposed number of dwelling units of an existing non-residential building converted to residential use is denied.

Existing building was built upon BSA approval #871-46-BZ to erect a twelve story building that exceeded the permitted area coverage, encroached on the required side yards and exceeds the permitted height.

The proposed number of dwelling units is based on total floor area being converted to residential use but, it shall be limited to the maximum residential floor area permitted on the zoning lot divided by the applicable factor per ZR § 23-22 and 23-141; and

WHEREAS, a public hearing was held on this appeal on February 8, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB’s denial was erroneous (the “Appellant”); and

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

WHEREAS, the site has an irregular shape, with 19,421 sq. ft. of lot area, frontage on Queens Boulevard, 64th Road, and 64th Avenue, and is within a C4-2 zoning district; and

WHEREAS, the site is occupied by a 13-story commercial building with a connected garage and loading dock, with a total floor area of 131,930 sq. ft. (the “Building”); and

PROCEDURAL HISTORY

WHEREAS, the subject appeal concerns the proposal to

convert the upper 12 floors of the Building from commercial use to 108 dwelling units and maintain the first floor commercial use; and

WHEREAS, the building was constructed in 1960, under the provisions of the 1916 ZR and pursuant to a 1959 Board approval (BSA Cal. No. 871-46-BZ Vol. II1) which allowed for waivers to height, side yards, lot coverage, and use, as a portion of the site was then within a residential zoning district; and

WHEREAS, the current zoning regulations do not restrict the total height (there are setback regulations), side yards, lot coverage, and use as the site is now completely within a C4-2 zoning district; and

WHEREAS, in 1992, the Board granted an amendment to the variance to permit the construction of a 900 sq. ft. extension of the ground-floor restaurant; and

WHEREAS, in June 2007, the Appellant informed the Board of its proposal to convert the Building to residential use and requested confirmation that the proposed conversion was in compliance with the 1959 variance; and

WHEREAS, by letter dated August 15, 2007, the Board stated that it did not have any objection to the proposed conversion, based on the Appellant’s representations that the conversion would not increase any existing non-compliance of the building; and

WHEREAS, in 2010, the Appellant applied for an alteration permit under Application No. 40222139, for renovations in connection with the proposed project, described as the conversion of 122,745 sq. ft. of previously utilized commercial floor area to residential use and the creation of 108 dwelling units; and

WHEREAS, DOB approved the conversion of the upper 12 floors of floor area (122,745 sq. ft.) to residential use, pursuant to ZR § 34-222 (Change in Use) and ZR § 35-31 (Maximum Floor Area Ratio for Mixed Buildings) but denied the Appellant’s proposed number of dwelling units pursuant to ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units); and

WHEREAS, in response, the Appellant applied to DOB for a determination from the Queens Borough Commissioner that its proposed number of dwelling units is permitted; and

WHEREAS, on October 12, 2010, DOB issued the Final Determination, denying the Appellant’s request; and

WHEREAS, accordingly, the question on appeal is limited to the determination of the maximum number of permitted dwelling units for the proposed conversion; and

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of the ZR as ZR §§ 34-222 and 35-31 permit all non-residential floor area in existence prior to December 15, 1961 in buildings within certain commercial districts to be converted to residential use and that ZR § 35-40 provides that the “maximum residential floor area permitted on the zoning lot,” in accordance with ZR § 35-31, is used as the basis for calculating the maximum

1 The site was subject to an earlier variance, in 1946 – BSA Cal. No. 871-46-BZ Vol. I – for a proposed movie theater and stores, which was never constructed.

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number of permitted dwelling units on such a zoning lot; and
PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the primary ZR provisions the Appellant and DOB cite are as follows, in pertinent part:

ZR § 34-222 (Exceptions to Applicability of Residential District Controls/Change of Use)

A non-residential use# occupying a #building#, or portion thereof, that was in existence on December 15, 1961, may be changed to a #residential use# and the regulations on minimum required #open space ratio# and maximum #floor area ratio# shall not apply to such change of #use#.

* * *

ZR § 35-31 (Applicability of Floor Area and Open Space Regulations to Mixed Buildings/Maximum Floor Area Ratio)

. . . A non-residential use# occupying a portion of a #building# that was in existence on December 15, 1961, may be changed to a #residential use# and the regulations on maximum #floor area ratio# shall not apply to such change of #use#.

* * *

ZR § 35-40 (Applicability of Density Regulations to Mixed Buildings)

In the districts indicated, the maximum number of #dwelling units# or #rooming units# on a #zoning lot# shall equal the maximum #residential floor area# permitted for the #zoning lot# determined in accordance with the provisions set forth in Section 35-30 (APPLICABILITY OF FLOOR AREA AND OPEN SPACE REGULATIONS) divided by the applicable factor in Section 23-20 (DENSITY REGULATIONS).

* * *

ZR § 23-22 (Density Regulations/Maximum Number of Dwelling Units or Rooming Units)

In all districts, as indicated, the maximum number of #dwelling units# or #rooming units# shall equal the maximum #residential floor area# permitted on the #zoning lot# divided by the applicable factor in the following table . . .

FACTOR FOR DETERMINING MAXIMUM NUMBER OF DWELLING UNITS OR ROOMING UNITS

District	Factor for #Dwelling Units#	Factor for #Rooming Units#
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...
R6 R7 R8B	680	500
...

ZR § 23-24 (Density Regulations/Special Provisions for Building Used Partly for Non-Residential Uses)

In all districts, as indicated, if a #building# is used partly for #residences# and partly for non-residential uses# (other than #community facility uses#, the provisions for which are set forth in Article II, Chapter 4), the maximum number of #dwelling

units# or #rooming units# permitted on the #zoning lot# shall equal the total #residential floor area# permitted on the #zoning lot# after deducting any non-residential floor area#, divided by the applicable factor in Section 23-22 (Maximum Number of Dwelling Units or Rooming Units); and

DISCUSSION

A. The Basis of the Appeal – The Plain Meaning of the Zoning Resolution

WHEREAS, the Appellant asserts that the provisions of the ZR at issue are clear and unambiguous and that, accordingly, one must “look to the plain meaning of the applicable sections” (*Gruson v. Dep’t of City Planning*, 2008 N.Y. Slip Op 32791U at 6, and *Raritan Dev. Corp. v. Silva*, 91 N.Y.2d 98 106-107 (1997)); and

WHEREAS, the Appellant bases its determination of the maximum number of dwelling units permitted for the conversion of a pre-1961 building in a C4-2 zoning district to residential use on the following provisions: (1) ZR § 35-30 (Applicability of Floor Area and Open Space Regulations to Mixed Buildings), which allows for the conversion of pre-1961 non-residential uses and leads to ZR § 35-31 (Maximum Floor Area Ratio) to establish the “maximum residential floor area permitted for the zoning lot;” (2) ZR § 35-40 (Applicability of Density Regulations to Mixed Buildings), which sets forth the formula for determining the number of dwelling units permitted in a mixed-use building in a commercial zoning district, references ZR § 35-30 for the floor area calculation and ZR § 23-20 (Density Regulations) for the dwelling unit factor; and (3) ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units) identifies the dwelling unit factor for a C4-2 (R6 equivalent) zoning district; and

WHEREAS, the Appellant states that the last paragraph of ZR § 35-31 allows for the conversion of non-residential use, which existed on December 15, 1961, to residential use in excess of what would be permitted by the applicable underlying zoning district floor area regulations; and

WHEREAS, thus, the Appellant asserts, in accordance with ZR § 35-31, the “maximum residential floor area permitted on the zoning lot” is based on the amount of existing non-residential floor area rather than the maximum residential floor area ratio of the C4-2 (R6 equivalent) zoning district; and

WHEREAS, the Appellant asserts that, by applying the plain meaning of ZR § 35-31, the entire existing non-residential floor area of 131,930 sq. ft. at the site may be converted to residential use; and

WHEREAS, the Appellant then consults ZR § 35-40 (which cross references ZR § 35-31) for instruction on determining the density regulations to apply to its total floor area; ZR § 35-40 cross references ZR § 23-20 for the density factor to apply to the floor area identified at ZR § 35-31; ZR § 23-22 (Density Regulations/Maximum Number of Dwelling Units or Rooming Units) sets forth the dwelling unit factor required for calculating the maximum number of dwelling units; and

WHEREAS, the Appellant also cites to ZR § 23-24 (Special Provisions for Building Used Partly for Non-Residential Uses) for the provision that if a building is used

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partially for non-residential uses, then the maximum residential floor area permitted on the zoning lot shall be reduced by any non-residential floor area used within the building; and

WHEREAS, the Appellant asserts that the cited provisions should be applied to the proposal as follows: (1) since the total building floor area of 131,930 sq. ft. existed on December 15, 1961, it can be converted to residential floor area, pursuant to ZR §§ 35-40 and 35-31, and 9,185 sq. ft. of floor area are being maintained as commercial uses, so the maximum residential floor area for the purposes of density calculations is 122,745 sq. ft. (after following ZR § 23-24's instruction to subtract any commercial floor area being maintained); (2) pursuant to ZR § 23-22, the applicable dwelling unit factor in a C4-2 (R6 equivalent) zoning district to divide into the floor area is 680; (3) the maximum residential floor area divided by the applicable factor (122,745/680) equals 180.51; and (4) therefore, the proposed 108 dwelling units, 73 fewer units than the maximum, is allowed; and

WHEREAS, the Appellant asserts that, in plain language, ZR § 35-40 specifies that the calculation for density should be based on the actual maximum residential floor area permitted pursuant to ZR § 35-31; and

WHEREAS, the Appellant distinguishes other provisions of the ZR where it specifies that the underlying district regulations are to apply and the text specifically notes that the regulation shall be applied "in accordance with the applicable district regulations;" and

WHEREAS, the Appellant asserts that the sections applicable to the conversion of a pre-1961 building (ZR §§ 35-40 and 35-31) direct the opposite and state that the district regulations with respect to floor area ratio are not applicable to such residential conversion; and

WHEREAS, the Appellant cites to ZR § 15-111, which states "the maximum number of dwelling units permitted shall be determined in accordance with the applicable district regulations" as an example of where the ZR directs readers to apply the applicable district restrictions as opposed to ZR § 35-31 which state that the district regulations with respect to floor area are not applicable to the residential conversion of a pre-1961 non-residential building; and

WHEREAS, the Appellant maintains that the ZR is not ambiguous and that DOB has misapplied the regulations by applying floor area regulations of the underlying district to the dwelling count calculations; and

WHEREAS, the Appellant states further that even if the meaning of "maximum residential floor area on the zoning lot" is ambiguous, the Court of Appeals instructs that the ambiguity should be resolved in favor of the property owner, citing Toys "R" Us v. Silva, 89 N.Y.2d 411 (1996); and

WHEREAS, lastly, the Appellant asserts that DOB's interpretation of ZR § 23-22 as applied to the subject site would create an absurd result; and

WHEREAS, specifically, the Appellant states that if the maximum floor area permitted in the zoning district (rather than the maximum permitted on the site as built prior to December 15, 1961) were the basis for the dwelling unit calculations, 122,745 sq. ft. of residential floor area would yield only 56 dwelling units at an average of 2,192 sq. ft. each

while ZR § 23-22 contemplates a dwelling unit factor of only 680 (sq. ft.); and

WHEREAS, the Appellant asserts that DOB ignores ZR § 35-31 which established the amount of residential floor area permitted on the zoning lot and instead calculates the maximum permitted residential floor area on a hypothetical zoning lot without a pre-existing legal non-complying building; and

WHEREAS, the Appellant set forth several scenarios using DOB's methodology that it found to lead to unintended results, including (1) if only 47,193 sq. ft. of floor area is used as the basis for calculating the dwelling unit count (based on 2.43 residential FAR in an R6 zoning district), the result would be 69 units at an average of 1,879 sq. ft. per unit; and (2) if the Appellant retained six floors of commercial use and converted only seven floors to residential use, 59,000 sq. ft. would need to be subtracted from 47,193 sq. ft., resulting in a negative amount of floor area and dwelling units, even though DOB would allow seven floors of the building to be converted to residential use, pursuant to ZR § 35-31; and

WHEREAS, the Appellant concludes that the meaning of "maximum residential floor area permitted on the zoning lot" in ZR § 35-40, in the context of residential conversions pursuant to ZR §§ 34-222 and 35-31, is the maximum residential floor area allowed on the zoning lot rather than the maximum residential floor area allowed pursuant to underlying zoning district regulations, based on the plain language of the ZR; and

B. The Department of Buildings Interpretation

WHEREAS, DOB asserts that it is erroneous to use all of the proposed residential floor area as the basis for calculating the permitted density of the converted building for the following primary reasons: (1) the ZR requirements are clear and unambiguous; (2) there is an exception to the standard density calculation, but it does not apply to the subject proposal; (3) its interpretation is consistent with ZR § 11-22 (Applications of Overlapping Regulations) and does not create an absurd result; and (4) requiring compliance with density for residential conversions under Article III is sound public policy; and

WHEREAS, DOB cites to ZR §§ 34-222 and 35-31 in its analysis as the appropriate sections to apply to mixed buildings with regard to exemption from floor area and lot coverage limitations, but not for dwelling unit calculations; and

WHEREAS, DOB cites to ZR § 35-40 for the regulation of dwelling unit count and notes ZR § 35-40's reference to ZR § 23-20 for the applicable density factor; and

WHEREAS, DOB agrees with the Appellant that the language of ZR § 35-40 is unambiguous, but to a different result; DOB finds that the maximum residential floor area "permitted" on the subject zoning lot for the dwelling unit count calculation is determined by identifying the maximum residential floor area ratio in the district, which is 2.43, per ZR § 23-142, multiplied by the lot area; and

WHEREAS, DOB finds that the maximum amount of floor area permitted to be converted to residential use is the

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appropriate basis for the floor area calculation at ZR § 35-31, but not for the dwelling unit count computation; and

WHEREAS, DOB concludes that since the maximum permitted floor area for a lot with 19,421 sq. ft. of lot area in an R6 equivalent zoning district is 47,193 sq. ft., that is the appropriate basis for the dwelling unit computation; and

WHEREAS, thus, DOB's methodology of dividing 47,193 sq. ft. of floor area by a factor of 680 results in a possible conversion to 69 dwelling units or 56 dwelling units if 9,185 sq. ft. of commercial floor area remains; and

WHEREAS, as to whether an exception to the standard density calculation applies, DOB cites to ZR § 15-111 which states that "where the total *floor area* on the *zoning lot* exceeds the maximum *floor area* permitted by the applicable district regulations, such excess *floor area* may be converted in its entirety to *residences*. Such excess *floor area* shall be included in the amount of *floor area* divided by the applicable factor of 23-20;" and

WHEREAS, DOB notes that ZR § 15-111 does not apply in C4-2 zoning districts, so the exception to the dwelling unit restriction is not available to the Appellant; and

WHEREAS, instead, DOB finds that Article III applies to C4-2 zoning districts and it does not include a section on how to calculate density for a building being converted under ZR § 34-222 or § 35-31; and

WHEREAS, as to the reasonableness of the result, DOB states that its interpretation is consistent with ZR § 11-22 and does not lead to absurdity; and

WHEREAS, DOB states that the Appellant's examples which do not allow for any dwelling units arise from a scenario with too much residential and non-residential floor area to be in compliance with ZR § 23-24 (Special Provisions for Buildings Used Partly for Non-Residential Uses); and

WHEREAS, DOB finds that the Appellant's examples include contradictory regulations and, per ZR § 11-22, when there are contradictory regulations over the bulk of buildings, the more restrictive shall govern such that even if ZR § 34-222 or § 35-31 would permit a conversion, if the conversion cannot be accomplished without violating ZR § 23-24, then it is prohibited by ZR § 11-22; and

WHEREAS, DOB also cites to public policy interests as a reason for limiting the dwelling unit count as it suggests; and

WHEREAS, specifically, DOB states that the building, which is built to a floor area ratio of approximately 6.32 far exceeds the 2.43 FAR residential maximum permitted by the underlying C4-2 (R6 equivalent) zoning district regulations; and

WHEREAS, DOB asserts that a building of the Building's size is not permitted even if ZR §§ 34-222 and 35-31 would otherwise allow it and the requirements of the number of dwelling units associated with the total pre-existing FAR (rather than the underlying zoning district regulation's maximum FAR) is not anticipated by the area's provision of government services; and

WHEREAS, DOB identifies its density calculations as

a check on ZR §§ 34-222 and 35-31 potentially creating strains on city services; and

WHEREAS, finally, DOB made a supplemental argument that ZR § 35-31 does not apply to the Building since it only applies to buildings that were mixed-use as of December 15, 1961; and

WHEREAS, DOB contrasts the language of ZR § 35-31 to ZR § 34-222 in that ZR § 35-31 identifies its applicability to "a non-*residential use* occupying a portion of a building that was in existence on December 15, 1961" (emphasis added) while ZR § 34-222 identifies "[a] non-*residential use* occupying a building, or portion thereof" (emphasis added) to mean that ZR § 35-31 does not apply to buildings, like the Building, that were non-residential in their entirety because only ZR § 34-222 identifies a "building," rather than just a "portion of a building;" and

WHEREAS, DOB cites to the second paragraph of ZR § 35-31, rather than the final paragraph regarding non-residential use in existence on December 15, 1961 which the Appellant cites and DOB finds to be inapplicable; the second paragraph states that "[t]he maximum *floor area ratio* permitted for a *residential use* shall be set forth in Article II, Chapter 3;" and

WHEREAS, DOB notes that Article II, Chapter 3 sets forth the maximum floor area of 47,193 sq. ft. for the site based on the underlying district regulations; and

C. The Appellant's Response to the Department of Buildings

WHEREAS, the Appellant disagrees with DOB's reading of ZR § 35-31 and finds that it is erroneous to conclude that the text distinguishes between buildings which were non-residential in part or non-residential in their entirety; it finds "a portion" to mean "any portion" and there is no basis to find that a building that was entirely non-residential on December 15, 1961 could not be covered by the section; and

WHEREAS, the Appellant finds that DOB's interpretation could lead to discordant results if (1) the building had been occupied by 12 floors of commercial use and one floor of residential use as of December 15, 1961 as opposed to (2) the building being occupied by 13 floors of commercial use; in the former, the Appellant would now be able to convert to 108 residential units, but in the latter, it would only be able to convert to 56 residential units; and

WHEREAS, the Appellant finds DOB's supplemental argument about the inapplicability of ZR § 35-31 to be contrary to earlier assertions and the Appellant is unconvinced that the disparate results of the two scenarios cited above were intended by the ZR; and

CONCLUSION

WHEREAS, the Board agrees with the Appellant's analysis for determining the maximum permitted dwelling units for the Building; and

WHEREAS, the Board agrees with the Appellant that the appropriate methodology is to follow the interrelated texts and cross references as follows: (1) begin at ZR § 35-31 (Maximum Floor Area Ratio) which states that the maximum floor area regulations do not apply for

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conversions of pre-1961 buildings; (2) ZR § 35-31 leads to ZR § 35-40 (Applicability of Density Regulations), which states that “the maximum number of *dwelling units* or *rooming units* on a *zoning lot* shall equal the maximum *residential floor area* permitted for the *zoning lot* determined in accordance with the provisions set forth in Section 35-30” and references the dwelling unit factor in ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units); (3) ZR § 23-22 provides a dwelling unit factor of 680 for C4-2 (R6 equivalent) zoning districts; and

WHEREAS, the Board agrees with the Appellant that ZR § 35-40 and the relevant phrase “the maximum *residential floor area* permitted for the *zoning lot*,” as informed by ZR § 35-31, which states that “the regulations on maximum *floor area ratio* shall not apply to such change of use” is unambiguous in the context of determining the maximum permitted floor area and, ultimately, the dwelling unit count for the Building; and

WHEREAS, the Board acknowledges that there are other places in the ZR where the text distinguishes between the maximum floor area permitted and the maximum floor area permitted *pursuant to the underlying district regulations* and that there may be other situations where those provisions have different meanings, but it finds that in the context of determining the ability to convert the floor area of the subject pre-1961 building to residential use and individual dwelling units, ZR §§ 35-40 and 35-31, read together or read separately, convey that the underlying district regulations do not apply to the density regulations for the subject pre-1961 building; and

WHEREAS, in addition to the language being unambiguous, the Board finds that it would be incongruous to allow for the full conversion of the floor area of a pre-existing building, pursuant to ZR §§ 35-40 and 35-31, and accept an FAR in excess of the underlying district regulations, but then apply a different standard – the underlying district regulations – when it comes to computing the dwelling unit count, pursuant to the factor set forth at ZR § 23-22; and

WHEREAS, further, the Board notes that ZR § 35-40 refers to ZR § 35-30 (and, thus, § 35-31) for determining the floor area permitted and only refers to ZR § 23-20 (and, thus, § 23-22) for obtaining the dwelling unit factor with which to divide the floor area; and

WHEREAS, the Board does not find that ZR § 11-22 applies since one does not encounter contradictory provisions when following the Appellant’s methodology; and

WHEREAS, the Board agrees with the Appellant that the appropriate context for the analysis of the dwelling count is the conversion of a legal pre-1961 building and not a hypothetical zoning lot in the C4-2 zoning district; and

WHEREAS, accordingly, the Board determines that in the context of converting a pre-1961 mixed-use building, like the Building, maximum residential floor area permitted on the zoning lot derives from the actual floor area and not hypothetical floor area if the pre-1961 building did not exist; and

WHEREAS, the Board finds that the absence of an exception for C4-2 zoning districts in ZR § 15-111 (Number of Permitted Dwelling Units) is not instructive to the facts of the subject case since the context and the purpose for the conversions at issue in ZR § 15-111 are not analogous to the subject case; and

WHEREAS, the Board concludes that, under the subject facts, the allowable floor area and the allowable density should be analyzed by following the interrelated provisions of ZR §§ 35-31, 35-40, and 23-22, which apply to the legal pre-1961 building on the site, rather than by basing one part of the equation on the existing permitted floor area, without conditions, and basing another part of the equation on the hypothetical maximum floor area permitted pursuant to the underlying zoning district regulations, without consideration of the existence of a legal pre-1961 building on the site; and

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated October 12, 2010, denying the proposed dwelling unit count, is hereby granted.

Adopted by the Board of Standards and Appeals, March 15, 2011.

220-10-BZY

APPLICANT – D.A.B. Group, LLC, for D.A.B. Group, LLC, owner.

SUBJECT – Application November 18, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 Zoning District. C4-4A Zoning District.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, aka 139, 141 Orchard Street, northern portion of block bound by Orchard Street, to the east Rivington to the north, Allen Street to the west and Delancy street to the south, Block 415, Lot 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Nick Zagami.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

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

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and

WHEREAS, the subject site is a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87'-9" and a depth of 127'-3", and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the "Building") on Lots 61, 66 and 67, utilizing development rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191'-0"; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting excavation of the premises and the construction of the foundation of the Building, and work commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the "New Building Permit") was issued by DOB permitting the construction of the Building (collectively, the "Permits"); and

WHEREAS, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, as of that date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on June 16, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 311-08-BZY, pursuant to ZR § 11-331, and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR §11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

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

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

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

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

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

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

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

WHEREAS, by letter dated December 22, 2010, DOB stated that the Foundation Permit and the New Building Permit were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; 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 were timely renewed until the expiration of the original two-year term for construction; and

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, and completion of seven floors of the superstructure, with partial construction of the eighth floor; and

WHEREAS, in support of this statement, the applicant has submitted the following: an affidavit from the owner enumerating the completed work; construction contracts, copies of cancelled checks, copies of lien waivers evidencing payments made by the applicant; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$4,826,511, or 32 percent, out of the approximately \$15,249,467 cost to complete; and

WHEREAS, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and copies of lien waivers evidencing payments made by the applicant; and

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No.

110251361-EW-OT, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 15, 2013.

Adopted by the Board of Standards and Appeals, March 15, 2011.

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district.

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Charles Moerdler, Samin Sewell, Judy Baier, Brian Aucoin, Teresa Grant Steth, Sarah Aucoin, Margaret Groarke, Daniel Padunacht, Russ Agdern, Dart Weststerd.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yorán –Wastin, owner.

SUBJECT – Application December 6, 2010 – Appeal challenging the Department of Buildings’ revocation of a permit for a parking space and curb cut. R6B zoning district.

PREMISES AFFECTED – 97 Saint Marks Avenue, 392’ west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Laleh Hawa.

For Opposition: Frampton Tolbert, Susan Sullnarz, Lee Warshavsky, Robert Biegen, Margaret M. Elwert, J. Alkson Gockett and Patti Hagan.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 15, 2011
1:30 P.M.**

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

ZONING CALENDAR

186-10-BZ

CEQR #11-BSA-029M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospital Center, owner; New York University, lessee. SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (*NYU Langone Medical Center*), contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated September 24, 2010, acting on Department of Buildings Application Nos. 120448284, 120448293, and 120448998, reads in pertinent part:

1. No required rear yard and rear yard equivalent are provided contrary to ZR 24-36 and ZR 24-382.
2. Portion of the building within the initial setback distance exceeds maximum permitted height of 85 feet above curb level and penetrates sky exposure plane contrary to ZR 24-522.
3. No required 20-foot rear yard setback is provided above the height of 125 feet as required by ZR 24-552.
4. Proposed tower coverage for aggregate areas exceeds 40% of zoning lot contrary to ZR 24-54.
5. Proposed accessory parking exceeds the maximum permitted 100 accessory parking

spaces pursuant to 13-132 and does not provide the minimum 200 SF per accessory parking space pursuant to 25-62.

6. Proposed curb cuts along wide streets (First Avenue and East 34th Street) are contrary to 13-142; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of two new community facility buildings on the campus of the New York University Langone Medical Center (the “Medical Center”) that do not comply with zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in the *City Record*, and then to decision on March 15, 2011; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, subject to the condition that the applicant consider alternative designs for vehicle ingress and egress which would allow for an increase in the planted area and a decrease in the number of proposed curb cuts; and

WHEREAS, the application is brought on behalf of the Medical Center, a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34th Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30th Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, on November 20, 2001, the Board granted a special permit pursuant to ZR § 73-64 to allow the construction of a new medical research and laboratory building (Use Group 3A) on the site, contrary to zoning regulations for height and setback, rear yard, and minimum distance between buildings; and

WHEREAS, most recently, on July 13, 2010, under BSA Cal. No. 41-10-BZ, the Board granted a variance to permit the renovation and enlargement of the existing Emergency Department and the addition of 354 sq. ft. of signage at the entrances and on the façade of the Emergency Department, contrary to zoning regulations for rear yard and signage; and

WHEREAS, the applicant notes that the zoning lot is subject to a 1949 indenture between the City and New York University (“NYU”), pursuant to which portions of East 31st Street, East 32nd Street and East 33rd Street were demapped and

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their beds conveyed to NYU; the indenture also created a sewer easement and requires that no building on the zoning lot have a height greater than 25 stories, that lot coverage on the zoning lot not exceed 65 percent, and that at least 235 parking spaces be provided on the zoning lot; and

WHEREAS, the proposed construction would be located on the northeast portion of the zoning lot, bounded by East 34th Street to the north, First Avenue and two Amtrak ventilation towers to the west, the FDR Drive Service Road to the east, and the Medical Center's 21-story Tisch Hospital building ("Tisch Hospital") and four-story Coles Student Labs to the south (the "Development Site"); and

WHEREAS, the Development Site is an irregular parcel which occupies the entire East 34th Street frontage of the superblock, two frontages on First Avenue of approximately 127 feet and 35 feet, and approximately 552 feet of frontage on the FDR Drive Service Road; and

WHEREAS, the Development Site is currently occupied by the ten-story Perelman Building, the nine-story Rusk Institute for Rehabilitative Medicine (including the one-story Auxiliary Pavilion), and the one-story northern service wing; these existing buildings would be demolished to make way for the proposed construction; and

WHEREAS, the applicant proposes to construct: (1) a 22-story major clinical building with a floor area of 687,731 sq. ft., which will be physically linked to, and function with, the existing Tisch Hospital (the "Kimmel Pavilion"); and (2) a six-story building with a floor area of 40,438 sq. ft., which will house both a modern cogeneration facility to serve the entire campus and a radiation oncology facility (the "Energy Building") (collectively, the Kimmel Pavilion and the Energy Building make up the "New Buildings"); and

WHEREAS, the applicant also proposes to relocate the Medical Center's bulk oxygen tank facility to a site at the south end of the zoning lot; and

WHEREAS, the applicant states that the construction of the New Buildings will result in a total floor area for the zoning lot of 2,601,636 sq. ft. (6.37 FAR); the maximum permitted FAR for a community facility in the subject zoning district is 6.5; and

WHEREAS, the proposed construction will create the following non-compliances on the site: a portion of the Kimmel Pavilion is located within a required rear yard and the bulk oxygen tank facility, at the southern end of the zoning lot, is located wholly within a required rear yard (rear yards with minimum depths of 30'-0" are required); the Energy Building fully occupies a required rear yard equivalent (a rear yard equivalent with a minimum depth of 60'-0" is required); the portion of the Kimmel Pavilion located more than 125 feet above the required rear yard provides a rear yard setback of only 5'-0" (a rear yard setback of 20'-0" is required above the height of 125'-0"); a total tower coverage for the zoning lot of 171,578 sq. ft. (a maximum tower coverage of 163,404 sq. ft. is permitted); the addition of 140 accessory parking spaces (100 accessory parking spaces is the maximum permitted for hospital developments or enlargements in Manhattan

Community District 6); a parking garage with 150 sq. ft. per accessory parking space (200 sq. ft. is the minimum required per accessory parking space); and the relocation and enlargement of two existing curb cuts on East 34th Street, a wide street, and the addition of a second curb cut on First Avenue, a wide street (entrances and exits to permitted accessory off-street parking spaces may not be located on a wide street in Manhattan Community District 6); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) a sufficient number of up-to-date operating and procedure rooms, private inpatient rooms, observation units for post-procedure patients, radiation oncology facilities, and attendant spaces to satisfy increased patient volumes and current medical standards; (2) hospital floor plates that are highly flexible and repetitive; (3) providing physical and functional connections among the New Buildings and the existing Tisch Hospital, to create a single integrated hospital system with a single standard of care; (4) an efficient and up-to-date energy system with direct utility connections to all campus buildings; and (5) additional parking spaces and improved access through and around the hospital; and

WHEREAS, the applicant states that each year the Medical Center admits approximately 36,000 inpatients and 600,000 ambulatory visits and performs 25,000 surgeries; and

WHEREAS, the applicant represents that these numbers are expected to increase by approximately 47 percent for procedure volumes and 21 percent for inpatient discharges within the next ten years; and

WHEREAS, accordingly, the applicant represents that the Medical Center requires additional operating and procedure rooms and patient rooms to meet the demand created by current and projected patient volumes; and

WHEREAS, the applicant states that existing operating and procedure rooms are insufficient in number for this demand and insufficient in size for the integration of new technologies and procedures; and

WHEREAS, specifically, the applicant states that there is a projected need for 82 operating and procedure rooms while only 69 such rooms exist, and the optimal size for an operating and procedure room is 600 to 650 sq. ft., while the Medical Center's existing rooms range in size from 310 to 550 sq. ft.; and

WHEREAS, the applicant states that there is also a shortage of recovery rooms and that such rooms are too small in size and clearance, causing a backup in the operating rooms, and as a result, operating suites are used inefficiently, with extended wait times for patients; and

WHEREAS, as to the Medical Center's patient rooms, the applicant states that only 12 percent of the Medical Center's inpatient beds are designed for critical care, while national benchmarks for similar facilities require that 40 to 50 percent of inpatient beds be designed for such critical care; and

WHEREAS, the applicant notes that the existing inpatient rooms are designed for multiple beds, and that the

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Medical Center's goal, based on current medical standards, is that all inpatient beds be located in single-patient rooms, which is important for reducing the spread of infection, and providing privacy for patients and family members; and

WHEREAS, the applicant represents that the Medical Center also has a need for observation areas for patients who do not require hospitalization after a procedure but require observation for a period of less than 24 hours, to accommodate for the increasing number of outpatient procedures; and

WHEREAS, the applicant states that the Medical Center's existing inpatient beds, procedure rooms, and patient care areas are located in three buildings (Tisch Hospital, the Rusk Institute building, and the Schwartz Health Care Center) which are physically and operationally separate, creating inefficiencies and redundancies in equipment, support space, and clinical supply inventories; and

WHEREAS, the applicant represents that the Rusk Institute building, constructed in 1952, is unsuitable for renovation due to its age, condition, column grid and configuration (such as low floor-to-floor heights of 11'-4½" and narrow floor plate dimensions of 50'-0" by 296'-6" above the ground floor), and the Schwartz Health Care Center is undersized for inpatient use and is located near the southern end of the Medical Center campus, remote from the other clinical facilities; and

WHEREAS, the applicant states that Tisch Hospital is limited by existing floor-to-floor heights (typically 11'-4 ½") and floor plate dimensions (typically 343 feet by 134 feet on the lower floors and 278 feet by 80 feet on the upper floors) which cannot be adapted to a state-of-the-art facility for the highest acuity level of care because: (1) there is no expansion space available for emerging clinical practices; (2) existing corridors connecting the entrances and various departments are circuitous and difficult for patients and hospital staff to navigate; and (3) the building lacks adequate swing space to accommodate relocations during the renovation of other hospital buildings, and other buildings on the Medical Center campus lack adequate swing space to accommodate patient beds during the renovation of Tisch Hospital; and

WHEREAS, the applicant represents that the new facility must be integrated with the existing Tisch Hospital, especially on critical procedure floors, so that patients and staff can move freely between buildings as needed to satisfy patient care and support needs; and

WHEREAS, the applicant further represents that the floor plates must be repetitive so as to create an environment that doctors and nurses can easily learn and efficiently navigate, and must be highly flexible and free of major permanent obstructions so that the building may be adapted for changes in patient care and technology that are likely to occur over the buildings' expected 100-year lifespan; and

WHEREAS, the applicant states that the Kimmel Pavilion will satisfy these programmatic needs because the

lower levels of the Kimmel Pavilion will provide large contiguous floor plates, with a concentrated elevator and utility core surrounded by large amounts of space unconstrained by vertical penetrations, which will allow for flexibility in accommodating operating and procedure rooms, and will allow for floor plates that are repetitive and easily navigable; and

WHEREAS, the applicant further states that each procedure floor of the Kimmel Pavilion would support eight to 12 operating and procedure rooms as well as associated pre-operative holding, recovery, and support areas, and procedure rooms would be clustered to allow for efficient staffing and management of patient flow and pre- and post-procedure care; and

WHEREAS, the applicant notes that the Kimmel Pavilion would also be physically linked and function with the existing Tisch Hospital, such that: (1) the entrances and elevators of the two buildings would be physically and visually connected by a public concourse running between the lobby and second floor of the Kimmel Pavilion; (2) the second floor of Tisch Hospital and a service corridor would link the buildings at the first and second floors of the Kimmel Pavilion; and (3) two of the Kimmel Pavilion's procedure levels would align with key procedure floors of the Tisch Hospital building, thereby creating large, contiguous, and flexible clinical areas; and

WHEREAS, as to the programmatic need for the Energy Building, the applicant states that electrical requirements for the existing Medical Center facilities have been rapidly increasing due to new clinical and research technologies, greater intensity of computing, and greater reliance on information technologies for medical care; and

WHEREAS, the applicant further states that the Medical Center's existing electrical facilities are incapable of meeting the growing need and are burdened with a 50-year old campus electrical distribution system, overloaded and outdated electrical transformers, and switchgear that expose the campus to the risk of power failure; and

WHEREAS, the applicant states that the proposed Energy Building would supplement and replace the existing facilities with a combined heat and power facility with direct utility connections with all campus buildings, which would provide energy efficiently, reliably, and cost-effectively; and

WHEREAS, the applicant further states that the Energy Building would include a cogeneration facility which would allow the thermal byproducts of electricity generation to be captured to supply heat and hot water on the site, thereby reducing electrical loads, transmission losses that occur when electricity is transmitted over long distances, and operating costs for the Medical Center, and would also reduce regional pollutants and greenhouse gas emissions; and

WHEREAS, the applicant represents that the Medical Center also needs updated radiation oncology treatment facilities, which are currently located in the cellar of Tisch Hospital, a floor primarily used for utility equipment and

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storage; and

WHEREAS, the applicant notes that the existing treatment vaults for the radiation oncology treatment facility, which serve to buffer the treatment equipment, are more than 20 years old and are not large enough to accommodate state-of-the-art equipment or to expand to satisfy growing demand; and

WHEREAS, the applicant states that because of the vaults' low ceilings, renovations would be difficult and would have a limited effect in improving patient experience, and that the required depth of the vaults makes it difficult to accommodate the facilities within the proposed Kimmel Pavilion; and

WHEREAS, the applicant represents that the most efficient location for the radiation oncology facilities is on the second floor of the Energy Building, where they can be provided with vaults of sufficient depth and where they can be physically and programmatically integrated with the proposed Kimmel Pavilion and Tisch Hospital; and

WHEREAS, the applicant notes that the Medical Center's program also requires the relocation of existing bulk oxygen tanks on the Development Site to a site fronting on former East 30th Street; the tanks will be surrounded by concrete masonry unit and screen walls with a height of approximately 48'-6"; and

WHEREAS, as to the need for 140 parking spaces in the accessory parking garage of the Kimmel Pavilion, the applicant states that there are only 110 existing accessory off-street parking spaces on the zoning lot outside of the Development Site and, as noted above, the 1949 indenture agreement with the City requires that the Medical Center provide at least 235 parking spaces on the zoning lot; therefore, the Medical Center has a programmatic need for the Development Site to provide more than the 100 accessory parking spaces permitted pursuant to the underlying zoning district regulations; and

WHEREAS, the applicant notes that the proposed parking garage would provide automated parking facilities which would maximize parking capacity by allowing the vehicles to be stacked closely together with no internal driveways, such that the proposed 150 sq. ft. per parking space would be sufficient to accommodate the facility; and

WHEREAS, the applicant states that the programmatic needs of the Medical Center also require an additional curb cut on First Avenue to allow two vehicular access points to the Kimmel Pavilion, thereby providing optimal configuration for accommodating vehicular traffic through and around the hospital; and

WHEREAS, the applicant submitted an engineer's report which states that the additional access point: (1) allows continued access to the hospital in the event that either entrance becomes inaccessible due to traffic congestion, road construction, or other activity; (2) provides an alternative entry point in the event that the City's proposed Select Bus Service (SBS) has a sustained impact on the East 34th Street entry point; (3) provides access from

First Avenue separate from that to the Emergency Department, allowing ambulances to access the Emergency Department without interference from general hospital traffic; (4) minimizes traffic volume and delays at the intersection of First Avenue and East 34th Street, as well as conflicts with pedestrians at the intersection's crosswalks; and (5) provides additional vehicular queuing space, which would in turn limit possible "spillback" into the adjacent streets; and

WHEREAS, as noted above, the Community Board requested that the applicant consider alternative designs for vehicle ingress and egress at the site; specifically, the Community Board suggested that the applicant consider an alternative in which: (1) the proposed new curb cut on First Avenue is eliminated; and (2) the existing First Avenue curb cut for ambulance access to the Emergency Department is widened to accommodate both ambulance access to the Emergency Department and vehicular access to the Kimmel Pavilion driveway; and

WHEREAS, in response, the applicant submitted a letter from its engineer stating that the Community Board's proposal would compromise the Medical Center's operations and site plan, since a shared curb cut would increase conflicts between hospital-bound vehicles and Emergency Department ambulances, cause driver confusion, and detract from the pedestrian environment; and

WHEREAS, the applicant submitted plans for an alternative scenario consisting of a complying hospital building, with 24 stories and 707,306 sq. ft. of floor area, and an adjacent accessory parking lot; and

WHEREAS, the applicant represents that the aforementioned programmatic needs could not be satisfied through the complying scenario; and

WHEREAS, specifically, the applicant states that the required rear yard and setbacks of the hospital building would significantly compromise the efficiency and flexibility of the building, as they would result in three fewer operating and procedure rooms and less space for associated services on each of the lower floors, a significant reduction in the size of the clinical areas on the fourth, fifth and sixth floors, and a reduction in the width of the corridor connecting the hospital building to Tisch Hospital such that the corridor would not align with the existing corridor in Tisch Hospital, thereby compromising the efficiency of circulation between the buildings; and

WHEREAS, the applicant represents that the rear yard requirements would also preclude the location of the Energy Building south of the hospital building, and the energy facilities and the radiation oncology facilities would therefore have to be located within the hospital building, resulting in a larger mechanical core, a reduced clinical area, less flexible floor plates, and a taller building; and

WHEREAS, the applicant further represents that the inclusion of heat and power facilities within the complying hospital building would also result in poor connectivity to the southern end of the Medical Center campus and would

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prevent the phasing of construction of the energy facilities, which is critical to maintaining operation of the Medical Center; and

WHEREAS, the applicant notes that the complying scenario also would not provide vehicular access from First Avenue, thereby increasing congestion and vehicle-pedestrian conflicts at the intersection of East 34th Street and First Avenue, creating a risk of “spillback” into the adjacent streets by limiting queuing space, and risking impeded access to the hospital in the event that traffic congestion, road construction, or other activity affects the existing East 34th Street entrance; and

WHEREAS, the applicant states that the complying scenario would have an inefficient internal roadway geometry because of the need to use existing curb cuts on East 34th Street, and there would be less parking for patients and visitors; and

WHEREAS, the applicant represents that the complying scenario would also require that the bulk oxygen tanks be relocated to a site on the north side of former East 30th Street, which would necessitate the removal of existing storage space on the site and the extensive relocation of existing rooftop mechanical equipment; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to the programmatic needs of the Medical Center, the applicant states that the variance request is also necessitated by unique conditions of the site that create a hardship, specifically: (1) the sub-grade conditions of the Development Site; and (2) the existing built conditions of the zoning lot; and

WHEREAS, as to the sub-grade conditions on the Development Site, the applicant submitted an engineer's report stating that the site suffers from the following sub-grade constraints: four Amtrak tunnels running beneath the zoning lot, a sewer easement held by the New York City Department of Environmental Protection (“DEP”) which spans the zoning lot in an east-west direction, storm sewers, a high water table, and poor soil conditions; and

WHEREAS, the engineer's report submitted by the applicant states that these constraints preclude the construction of cellars, which are commonly used for mechanical space in hospital buildings, and thus require that a greater amount of the buildings' bulk be located above grade, and they limit the location of foundations and elevator and mechanical cores, thereby constraining the configuration and dimensions of the buildings' footprints;

and

WHEREAS, as to the surrounding conditions on the zoning lot, the applicant states that the configuration of the Development Site is dictated by the location of existing buildings on the zoning lot which are integral to the Medical Center's mission and cannot be demolished and/or which must be physically connected with the New Buildings so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the location of the Development Site is also constrained by the location of two Amtrak ventilation buildings on the northwest portion of the superblock; one of these buildings has frontage on First Avenue, close to the corner of East 34th Street, and the other has no street frontage and is within the Medical Center's zoning lot, immediately adjacent to the north of Tisch Hospital; and

WHEREAS, the applicant states that Tisch Hospital is currently the Medical Center's primary inpatient facility and must remain in operation throughout the construction of the New Buildings; and

WHEREAS, Tisch Hospital is located in the center of the Medical Center campus in an east-west direction, and therefore acts as a barrier between buildings to the north and south, such that new clinical facilities must be physically connected with Tisch Hospital in order to create an integrated environment with a single standard of care; and

WHEREAS, the applicant represents that the Development Site is the only location on the zoning lot that allows for the efficient consolidation of clinical facilities, and the construction of a large medical facility elsewhere on the zoning lot would either be impeded by the two Amtrak ventilation buildings, or would require more extensive demolition and displacement of existing, functioning Medical Center facilities; and

WHEREAS, the applicant states that the location of the Energy Building is dictated by the need for a central location to minimize the length of utility connections with other buildings and the inability to route utility connections through Tisch Hospital; and

WHEREAS, specifically, the applicant states that Tisch Hospital is already highly congested with utility connections, and its age and low floor-to-floor heights (typically 11'-4½”) make it infeasible to route new utilities through the building; and

WHEREAS, the applicant further states that utilities cannot be routed between the Kimmel Pavilion and Tisch Hospital at the lowest service levels because of the sewer easement on the zoning lot, and they cannot be routed through the building at higher levels because doing so would require the displacement of clinical programs; and

WHEREAS, the applicant further states that, because Tisch Hospital is oriented in an east-west direction in the center of the campus, it precludes the location of the Energy Building further south on the campus; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs

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of the Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that the proposed buildings would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the New Buildings would be located among a multitude of medical institutions comprising the First Avenue “medical corridor,” including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses; and

WHEREAS, the applicant further states that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, as well as two unoccupied Amtrak ventilation buildings on the northwest portion of the superblock and the Office of the New York City Medical Examiner on the southwest portion of the superblock; as such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested rear yard waiver; and

WHEREAS, the applicant notes that the portion of the Kimmel Pavilion for which waivers are required from rear yard and rear yard setback regulations is located directly to the east of the southernmost Amtrak building on the Development Site, which the applicant represents would not be impacted by the proposed waivers because the Amtrak building contains mechanical equipment, is occupied only as needed by maintenance workers, and does not have windows, and therefore will not be impacted by the proposed variance; and

WHEREAS, the applicant states that the Energy

Building, which is located within a required rear yard equivalent and which exceeds the maximum permitted front wall height, fronts on the FDR Drive, and portions of the Kimmel Pavilion for which height and setback waivers are required are similarly adjacent to the FDR Drive, and that the only buildings adjacent to these portions of the New Buildings are Medical Center facilities, none of which are residential in character; and

WHEREAS, the applicant further states that the small portion of the Kimmel Pavilion which pierces the East 34th Street sky exposure plane is located across East 34th Street from a 35-story residential complex, and the impact of the waiver for this non-compliance would be negligible given the small volume of the encroachment, the scale of the residential complex, and the distance to the residential complex across the wide street; and

WHEREAS, the applicant further states that the proposed bulk oxygen tank facility, located within a required rear yard to the east of the Office of the Medical Examiner on former East 30th Street, would be only slightly larger than the existing building on the site, would be smaller in scale than the other buildings fronting on East 30th Street, and would help create a continuous street wall with the adjacent properties; and

WHEREAS, the applicant represents that the New Buildings would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or the surrounding neighborhood; and

WHEREAS, the applicant asserts that the New Buildings would actually improve the visual quality of the Development Site by replacing aging buildings on the Development Site with buildings of a contemporary design that will be designed to visually connect with other buildings on the Medical Center campus; and

WHEREAS, the applicant further asserts that the New Buildings would provide a benefit to the surrounding neighborhood and the City as a whole by providing a state-of-the-art, patient-centered, and integrated facility for inpatient and procedure-based care, and would further provide an upgraded energy infrastructure to ensure that the entire Medical Center campus is operated efficiently and safely; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center could occur on the existing site; and

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

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the

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projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Medical Center to fulfill its programmatic needs; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BSA029M, dated March 14, 2011; 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, DEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality, and noise impacts; and

WHEREAS, DEP accepted the November 2010 Phase II Workplan for the proposed Kimmel Pavilion and requested that a detailed Phase II Investigation Report be submitted to DEP for review and approval; and

WHEREAS, DEP accepted the November 2010 Remedial Action Plan and Construction Health and Safety Plan for the Energy Building and requested that a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on February 24, 2011 and filed for recording on March 2, 2011; and

WHEREAS, DEP reviewed the applicant's stationary and mobile sources air quality analyses and determined that significant impacts due to the proposed project are not anticipated; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a range of 28 to 44 dBA of window-wall noise attenuation and central air-conditioning as an alternate means of ventilation are required for the two proposed buildings; and

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

WHEREAS, accordingly, the Board has determined that

the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the construction of two new community facility buildings on the campus of the New York University Langone Medical Center that do not comply with zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 28, 2010" – twenty (20) sheets, "Received November 22, 2010" – four (4) sheets, and "Received February 4, 2011" – one (1) sheet; and *on further condition*:

THAT the parameters of the proposed buildings shall be in accordance with the approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT the window-wall noise attenuation requirements listed on sheet Z-1.02, stamped "Received February 4, 2011," and central air-conditioning as an alternate means of ventilation shall be provided in the New 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 substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, March 15, 2011.

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24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Mosst, Robert Pauls, Tony Maddaloni, Lorraine Budzik.

For Opposition: Peter Sell.

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

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Ralph Seroffolino and Chris Angeanni.

For Opposition: Leo Weinberger and Angela Calcagno.

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

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive

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service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for adjourned hearing.

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Lobel, Josh Rinesmith, Simon Molinsky, Rivka Molinsky, Eliyahu Babad and Nicole Fandrich.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright and Robert B. Pauls.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.