
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. 8

February 23, 2011

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DOCKET

New Case Filed Up to February 15, 2011

15-11-A

860 Sixth Avenue, Through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas., Block 832, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. An appeal challenging the Department of Building for a decision that an advertising sign is not legally non-conforming. C6-4X district.

16-11-BZ 181-30 Aberdeen Road, Aberdeen Road, between Surrey and Tyron Place., Block 7224, Lot(s) 34, Borough of **Queens, Community Board: 8**. Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space §23-141(a). R1-2 zoning 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

MARCH 8, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 8, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Pursuant to (§11-411) for an Extension of Term of a previously granted Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building 1076.2 square feet; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289' northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

198-00-BZ

APPLICANT – C. Anthony LoPresti, owner.

SUBJECT – Application January 31, 2011 – Extension of Term of a previously granted Special Permit (§73-125) for the conversion of a portion of the first floor community facility to medical offices which expired on December 12, 2010. R1-2 zoning district.

PREMISES AFFECTED – 4641 Hylan Boulevard, Hylan Boulevard and Arden Avenue, Block 5386, Lot 76, Borough of Staten Island.

COMMUNITY BOARD #3SI

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation by Alfred Smith, owners.

SUBJECT – Application February 17, 2011 – Extension of Time to obtain a Certificate of Occupancy, which expired on May 17, 2010, for a previously approved amendment granted pursuant to §§11-411 & 11-413 which permitted a change of use from wholesale (Use Group 7) to a retail (Use Group 6) use on the ground floor of a three story building; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue, southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

COMMUNITY BOARD #9Q

APPEALS CALENDAR

837-85-A

APPLICANT – Angelo F. Liarkos, R.A., for Cesar A. Linares, D.D.S., owner.

SUBJECT – Application December 23, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on December 17, 2010. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, southwest corner of 73rd Avenue and 167th Street, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

MARCH 8, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 8, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5' frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

Jeff Mulligan, Executive Director

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

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

SPECIAL ORDER CALENDAR

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a variance (§72-21) to legalize a two-story and cellar commercial building contrary to use regulations. R3X zoning district.

PREMISES AFFECTED –1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: David L. Businelli.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted variance permitting the legalization of a two-story and cellar commercial building contrary to use regulations, which expired on July 2, 2010; and

WHEREAS, a public hearing was held on this application on December 12, 2010 after due notice by publication in *The City Record*, with a continued hearing on January 25, 2011, and then to decision on February 15, 2011; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

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

WHEREAS, the site is located on the west side of Clove Road, between Tioga Street and Oswego Street, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1985 when, under the subject calendar number, the Board granted a variance to permit the enlargement and legalization of a two-story and cellar commercial building, for a term of five years; and

WHEREAS, subsequently, the grant was amended and

the term extended by the Board at various times; and

WHEREAS, most recently, on March 19, 2002, the Board granted a ten year extension of term, which expired on July 2, 2010; and

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

WHEREAS, at hearing, the Board directed the applicant to provide screening for the trash container on the site and to relocate the FedEx drop box away from the curb; and

WHEREAS, in response, the applicant submitted a revised site plan and a photograph reflecting the enclosure of the trash container and the relocation of the FedEx drop box; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on July 2, 1985, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 2, 2010, to expire on July 2, 2020, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received August 30, 2010”-(1) sheet and “January 25, 2011”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 2, 2020;

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

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

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. 510066768)

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

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – Amendment of a previously approved Variance (§72-21) to permit a residential/commercial building and community facility/dormitory building. The amendment will divide the project into two separate buildings and allow the construction and occupancy of one building prior to the construction and occupancy of the other. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon

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Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Howard Goldman.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site partially within an M1-4 zoning district and partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the construction of a 12-story mixed-use residential/commercial retail building (the “Mixed-Use Building”) and a six-story student dormitory building (the “Dormitory Building”) for the City University of New York (“CUNY”) Graduate Center, contrary to use and bulk regulations; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on January 25, 2011, and then to decision on February 15, 2011; and

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

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, and requests that the Board limit the occupancy of the Dormitory Building to graduate student and faculty housing only; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to this application (the “Opposition”), citing the following primary concerns: (1) the scope of the proposed amendment is not minor in nature, and therefore the subject application should be placed on the Board’s Zoning Calendar rather than the Special Order Calendar; (2) the Board’s original grant was contingent upon the Dormitory Building being occupied by the CUNY Graduate Center and faculty housing, and should be limited to such use; and (3) the purpose of the proposed amendment is to allow the applicant to construct only the Mixed-Use Building, contrary to the original grant; and

WHEREAS, the subject site is a through-block site bounded by Fifth Street to the west, 46th Road to the north, and 47th Avenue to the south, with a total lot area of 66,838 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since September 23, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of a 12-story mixed-use

residential/commercial retail building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage, contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711; and

WHEREAS, a letter of substantial compliance was issued by the Board on June 10, 2009, to permit certain modifications to the approved plans, and to acknowledge that although the project was originally filed at the Department of Buildings (“DOB”) under a single permit application (NB # 402661945, the project was subsequently filed as two separate projects, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under new NB # 420006111; and

WHEREAS, a second letter of substantial compliance was issued by the Board on December 8, 2009, stating that the Board has no objection to the issuance of a temporary and permanent certificate of occupancy for the Mixed-Use Building prior to the construction of the Dormitory Building and the connection between the two buildings; and

WHEREAS, the applicant states that the issuance of the December 8, 2009 letter was based on the anticipated occupancy of the Dormitory Building by the CUNY Graduate Center; however, subsequent to the issuance of the letter, the CUNY Graduate Center withdrew from the project; and

WHEREAS, the applicant now requests that the Board amend the grant to clarify that either the Mixed-Use Building or the Dormitory Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; and

WHEREAS, the applicant states that the amendment is requested because: (1) following CUNY Graduate Center’s withdrawal, the applicant is in the process of seeking alternative student housing users, and until a new user is identified it is not possible to secure the financing required to construct the Dormitory Building; (2) construction of the Mixed-Use Building has been delayed due to difficult market conditions and financing issues; and (3) the potential for financing the Dormitory Building and the Mixed-Use Building simultaneously is remote; and

WHEREAS, the applicant represents that the proposed amendment will allow each building to proceed independently, providing flexibility for the commencement of construction at the earliest possible time; and

WHEREAS, the Opposition argues that modifying the grant to permit the buildings to be constructed separately constitutes a major amendment, and therefore is not permitted to be heard on the Special Order Calendar, pursuant to the Board’s Rules of Practice and Procedure; and

WHEREAS, pursuant to the § 1-05(e) of the Board’s Rules of Practice and Procedure, applications for amendment of variances “may be considered on the Special Order Calendar of the Board provided the Board determines that the scope of the amendment is minor;” and

WHEREAS, the Board notes that the determination of whether the scope of a requested amendment is minor, such that it belongs on the Special Order Calendar, is solely within

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the Board's discretion; and

WHEREAS, the applicant notes that the original variance did not preclude the independent construction of the buildings, but was rather silent with respect to construction sequencing; the requested amendment is minor in that it merely clarifies that the buildings may be constructed either at the same time or separately, in order to allow construction to proceed at the earliest possible time depending on such factors as the availability of financing and the identification of users for the Dormitory Building; and

WHEREAS, the Board agrees with the applicant that the scope of the proposed amendment is minor in nature and therefore may be considered on the Special Order Calendar in accordance with the Board's Rules of Practice and Procedure; and

WHEREAS, the Opposition argues that the original grant was specific to graduate student and faculty housing in the Dormitory Building, and that any change in the occupancy of that building, such as to undergraduate use, should be prohibited; and

WHEREAS, in response, the applicant states that the issue of undergraduate use of the Dormitory Building is not the subject of the instant application, but notes that such use is permitted as-of-right in the portion of the site located within the R6A zoning district and that the Zoning Resolution makes no distinction between graduate and undergraduate dormitories; ZR § 22-13 (Use Group 3) merely lists "colleges or school student dormitories," which includes graduate, undergraduate, and other types of students attending school; and

WHEREAS, the Board notes that the proposed amendment would not permit a change in the program or operator of the Dormitory Building, and that in the event there is a change in the program and/or operator, such change will be subject to Board approval; and

WHEREAS, the Board further notes that any change to the BSA-approved plans for the Dormitory Building, which allowed 21 faculty housing units and 228 student dormitory suites (housing 380 students), would need to seek an amendment from the Board; and

WHEREAS, the Opposition also contends that the proposed amendment will enable the applicant to construct only the Mixed-Use Building, which was not contemplated in the Board's original grant and would not have been approved without the inclusion of the Dormitory Building; and

WHEREAS, the Board notes that the CUNY Graduate Center's programmatic needs served as the basis for the requested waivers for the Dormitory Building in the original grant, however, the waivers granted by the Board for the Mixed-Use Building were based on the unique degree of contamination on the site, which the Board determined created unnecessary hardship in complying with the applicable zoning requirements; and

WHEREAS, the applicant notes that the community facility space proposed in the Mixed-Use Building will be occupied by the Queens Council for the Arts, a nonprofit organization, in accordance with the Board's original grant;

and

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

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

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 2008, so that as amended this portion of the resolution shall read: "to permit the independent construction of the Mixed-Use Building and the Dormitory Building, such that either building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; *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 Dormitory Building shall be limited to graduate student and faculty housing with approximately 21 faculty housing units and 228 student dormitory suites (housing 380 students);

THAT any change to the program shall be subject to Board review and approval and that the process for such review shall be determined by the Board;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402661945)

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

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district. PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

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

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95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Lyra J. Altman.

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

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: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

299-99-BZ

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

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

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

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Carl A. Sulfaro.

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 15, 2011, at 10 A.M., for decision, hearing closed.

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: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

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: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for continued hearing.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing

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one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.
PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

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 and Steven Weiss.

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 15, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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

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

ZONING CALENDAR

29-10-BZ

CEQR #11-BSA-008Q

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 30, 2010, acting on Department of Buildings Application No. 402623103, reads in pertinent part:

“The proposed expansion of an Eating and Drinking Establishment in Use Group 6 twenty-five (25) feet into the portion of the zoning lot within the R5 District is contrary to section 22-00 ZR and requires a Special Permit from the BSA, pursuant to Section 73-52 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R5) zoning district and partially within an R5 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R5 zoning district, to allow an outdoor dining area as an extension of the existing eating and drinking establishment (Use Group 6) at the site, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on September 14, 2010 after due notice by publication in *The City Record*, with continued hearings on October 26, 2010, December 7, 2010 and January 25, 2010, and then to decision on February 15, 2011; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application, with the following conditions: (1) no smoking in the outdoor area; (2) closing hours no later than 10:00 p.m. Sunday through Thursday and 11:00 p.m. on Friday and Saturday; (3) no outside music; and (4) plantings on perimeter of outdoor seating no higher than six feet; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, subject to the conditions cited by the Community Board; and

WHEREAS, at hearing, a member of the community provided oral testimony in support of this application; and

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

WHEREAS, the subject site is located on an irregularly-shaped through lot with 75 feet of frontage on 31st Street and ten feet of frontage on 29th Street, between Ditmars Boulevard and 23rd Avenue; and

WHEREAS, the site is currently occupied by a one-story commercial building fronting on 31st Street; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-52 to extend the C1-2 zoning district regulations 25 feet into the portion of the zoning lot located within an R5 district; and

WHEREAS, the applicant notes that the site has a total lot area of 17,159 sq. ft., and is a through lot with frontages on both 31st Street and 29th Street; and

WHEREAS, the applicant states that the majority of the zoning lot is located within a C1-2 (R5) zoning district that extends 147'-6" into the site from 31st Street, but that the remaining portion of the zoning lot is located within an R5 zoning district; and

WHEREAS, the portion of the site that is within the C1-2 (R5) zoning district occupies 11,063 sq. ft. (64 percent) of the zoning lot, and the portion of the site that is within the R5 zoning district occupies 6,096 sq. ft. (36 percent) of the zoning lot; and

WHEREAS, the R5 portion fronts on 29th Street and occupies an irregularly-shaped portion of the site, located to the west of the C1-2 portion of the site; and

WHEREAS, the C1-2 district permits the Use Group 6 eating and drinking establishment; the R5 district permits only residential or community facility uses; and

WHEREAS, the applicant states that the proposed expansion of the existing eating and drinking establishment will extend only 25 feet into the R5 zoning district; therefore, by allowing the C1-2 use regulations to apply to 25 feet of the total width of the R5 portion of the lot, the proposed outdoor portion of the eating and drinking establishment will be permitted at the subject site; and

WHEREAS, however, the remainder of the lot will

remain solely within the R5 district, even after the boundary line is moved 25 feet west, and may only be used for community facility or residential use; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided: (a) that, without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds, tax maps, and Department of Buildings ("DOB") records establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, the evidence submitted by the applicant reflects that the site formerly consisted of three separate tax lots (Lots 49, 119 and 149) which were under single ownership since prior to December 15, 1961, and which have been merged into a single tax lot (Lot 49); and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 11,063 sq. ft. (64 percent) of the site's total lot area of 17,159 sq. ft. is located within the C1-2 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R5 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R5 portion is irregularly shaped, with a narrow width of 9'-9" fronting on 29th Street and extending 90'-0" into the site, then expanding to a width ranging between 75'-0" and 95'-4" at the interior of the site; and

WHEREAS, the applicant states that, because the R5 portion of the site only has 9'-9" of frontage on 29th Street, the building frontage requirements of the Building Code would preclude any conforming development on the interior of the lot within the R5 portion of the zoning lot; and

WHEREAS, the applicant further states that the rear yard requirements of the Zoning Resolution would preclude a residential development on the R5 portion of the zoning lot, and although a one-story community facility building with a height of 23 feet would meet the rear yard requirements, such a building would not meet the egress requirements of the Building Code; and

WHEREAS, based upon the above, the Board finds

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that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R5, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that the surrounding area is characterized by commercial retail stores fronting on 31st Street and residential uses fronting on 29th Street; and

WHEREAS, specifically, the applicant states that there are commercial retail uses immediately adjacent to the north and south of the subject building along 31st Street, and there are five attached homes immediately behind the subject building, fronting on 29th Street; and

WHEREAS, the applicant notes that the proposed outdoor dining area will be located entirely within the interior of the block between 31st Street and 29th Street, which is abutted by fully developed zoning lots fronting on both streets; and

WHEREAS, at hearing, the Board raised concerns about the impacts the proposed outdoor dining area would have on the surrounding residential uses, particularly with regards to noise; and

WHEREAS, in response, the applicant states that the block has a depth of 295 feet, and the distance between the rear walls of the homes fronting on 29th Street and the rear wall of the proposed outdoor dining area exceeds 65 feet, which is more than the width of most residential streets; and

WHEREAS, the applicant further states that the outdoor dining area is completely screened from all abutting lots by an existing stucco wall with a height of seven feet; and

WHEREAS, the applicant also submitted revised drawings and an operational plan which includes the following additional measures to mitigate any impact of the proposed outdoor dining area on the surrounding residential uses: (1) noise attenuating metal wall panels will be installed on the existing stucco wall; (2) a retractable awning will be installed to provide overhead coverage of the entire outdoor dining area when in use; (3) landscaping will be planted on both sides of the existing stucco wall, and several trees will be planted within the landscaped area; (4) the hours of operation for the outdoor dining area will be limited to Sunday through Thursday, from 11:00 a.m. to 10:00 p.m.; and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.; (6) the outdoor dining area will be closed during winter months; (7) all lighting will be directed down and away from adjacent residential uses; (7) outdoor music will not be permitted; and (8) smoking will not be permitted in the outdoor dining area; and

WHEREAS, the Board questioned whether it would be feasible to fully enclose the proposed rear extension of the eating and drinking establishment; and

WHEREAS, in response, the applicant represents that, because patrons will be able to enter and exit the rear of the

site from 29th Street, enclosing the proposed rear extension could result in problems related to the travel distance and egress door swing at the rear of the existing building, and potential confusion by patrons as to the location of the exits in the building; and

WHEREAS, the applicant further represents that the proposed installation of noise-attenuating metal wall panels on the existing stucco wall and the installation of a retractable motorized awning will effectively encapsulate any noise emanating from the outdoor dining area; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C1-2 zoning district portion of the lot into the R5 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-52 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.11BSA008Q, dated July 22, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the

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Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R5) zoning district and partially within an R5 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R5 zoning district, to allow an outdoor dining area as an extension of the existing eating and drinking establishment (Use Group 6) at the site, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 11, 2011” – two (2) sheets and “Received February 4, 2011” – two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 15, 2014;

THAT noise-attenuating metal wall panels shall be installed on the existing stucco wall in accordance with the BSA-approved plans;

THAT a retractable awning shall be installed over the outdoor dining area, in accordance with the BSA-approved plans and subject to DOB review and approval;

THAT landscaping and trees shall be planted on both sides of the existing stucco wall, in accordance with the BSA-approved plans;

THAT the hours of operation for the outdoor dining area shall be limited to Sunday through Thursday, from 11:00 a.m. to 10:00 p.m.; and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.;

THAT the outdoor dining area shall be closed during winter months;

THAT all lighting shall be directed down and away from adjacent residential uses;

THAT there shall be no outdoor music at the site;

THAT there shall be no smoking permitted in the outdoor dining area;

THAT the above conditions shall be implemented prior to the opening date of the outdoor dining area;

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

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

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

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

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

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

101-10-BZ

CEQR #10-BSA-076M

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to use (§42-14(D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block 483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2010, acting on Department of Buildings Application No. 120319413, reads in pertinent part:

“ZR 42-14 – In building in an M1-5B zoning district only uses 7, 9, 11, 16, 17A, 17B, 17C and 17E are allowed below the level of the second story unless modified by CPC.

Therefore a Use Group 6 eating and drinking establishment is not allowed “as-of-right” on the sub-cellar/cellar/and ground floor levels in a M1-5B zoning district”; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district within the SoHo Cast Iron Historic District, the conversion of an existing two-story building to a Use Group 6 use (including eating and drinking establishment) use, contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010 and December 14, 2010, and then to decision on February 15, 2011; and

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

WHEREAS, Community Board 2, Manhattan, does not support the application unless eating and drinking establishments are prohibited and the exterior spaces are prohibited from being used; and

WHEREAS, City Council Member Margaret Chin provided testimony in opposition to an eating and drinking establishment; and

WHEREAS, the residents of the condominium building to the north of the site at 56 Crosby Street, represented by counsel, (the “Opposition”) provided written and oral

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testimony in opposition to the application; and

WHEREAS, specifically, the Opposition raises the following primary concerns: (1) there are not unique conditions on the site, which create a hardship, as required by ZR § 72-21(a); (2) a conforming use would provide a reasonable return, contrary to ZR § 72-21(b); (3) an eating and drinking establishment would not be compatible with adjacent uses as it has the potential to attract night life, contrary to ZR § 72-21(c); and (4) the proposal to include an eating and drinking establishment use does not reflect the minimum variance as required by ZR § 72-21(e); the Opposition also asserts that: (1) a special permit from the City Planning Commission, pursuant to ZR § 74-781, rather than a variance, is the appropriate form of relief; and (2) a restrictive declaration limits the use of the building to a Use Group 9 use; and

WHEREAS, other community members presented opposition to an eating and drinking establishment; and

WHEREAS, the subject site is located on the west side of Crosby Street, between Broome Street and Spring Street, within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 20 feet of frontage on Crosby Street, a depth of 100 feet, and a lot area of approximately 2,001 sq. ft.; and

WHEREAS, the site is occupied with a vacant two-story building formerly used as a sculptor's residence/studio with a total floor area of 4,535 sq. ft. (2.27 FAR); and

WHEREAS, the applicant proposes to use the entire building for Use Group 6 use, which may include an eating and drinking establishment; and

WHEREAS, because the proposed Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the requested waiver is necessary; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the lot's narrow width; (2) the underbuilt nature of the existing building; and (3) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the width of the lot, the applicant represents that the lot's narrow width of 20.1 feet at the front lot line and 19.92 feet at the rear lot line results in a usable floor plate of approximately 1,550 sq. ft., which is inefficient for conforming uses, such as warehouses and wholesale distributors; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that of the 150 sites examined within the immediate vicinity - the M1-5B zoning district between Prince Street and Grand Street, and Mercer Street and Lafayette Street - only five (or three percent) had widths of less than 20 feet; and

WHEREAS, the applicant submitted a table, which identifies the lot widths, lot area, and existing and potential FAR for the sites in the study area, which reflects that the site is among the smallest and narrowest within the study area, as further evidenced by a radius diagram; and

WHEREAS, as to the underbuilt nature of the building, the applicant represents that the existing site has a

proportionately significant amount of development potential, in terms of FAR, compared to the vast majority of sites in the study area; and

WHEREAS, the applicant provided an analysis which reflects that only six lots within the study area with widths less than 25 feet are built to an FAR of less than 50 percent the maximum permitted, such as the subject site, which is at 2.27 FAR (5.0 FAR is the maximum permitted); and

WHEREAS, the applicant represents that the hardship at the site is primarily attributed to the limited and constrained floor plate, which significantly diminishes the viability and revenue that may be generated by a conforming use and; and

WHEREAS, as to the potential to enlarge the existing building or construct a new building at the site, the applicant asserts that enlarging the building would be both logistically and financially infeasible and that a proposal for a new or enlarged building would include considerable risk due to the zoning use limitations at the site and the small footprint, which would limit the use on the upper floors to Joint Living/Work Quarters for Artists (JLWQA); and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) the small floor plate; (2) the absence of a freight or passenger elevator; (3) the limits on access to the building; (4) the absence of a loading dock; and (5) the location on a narrow street; and

WHEREAS, as to the floor plate, the applicant states that the usable space in the building, after considering wall thickness of between 15 and 17 inches, is approximately 1,550 sq. ft., which the applicant states contributes to the inability to accommodate a modern conforming manufacturing use; and

WHEREAS, as to the absence of an elevator, the applicant asserts that the vertical transfer of goods between floors is difficult; and

WHEREAS, as to the building's accessibility, the applicant asserts that the accessibility is limited to two pedestrian-sized doors on the street frontage, rendering the transfer of goods in or out of the building difficult and, the absence of ramps limits access to the ground floor for bulk shipments; and

WHEREAS, the applicant asserts that the small size and narrowness of the lot precludes the site from accommodating a loading dock; and

WHEREAS, the applicant asserts that Crosby Street has a width of 50 feet, and is considered too constrained to reasonably accommodate large delivery trucks associated with a conforming manufacturing or warehouse use; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the proposed Use Group 6 use is permitted above the first floor and, thus, the applicant is only seeking relief for the first floor and cellar levels; and

WHEREAS, the Opposition asserts that the site can accommodate a conforming use either as the building exists or by enlarging the existing building or constructing a new one; and

WHEREAS, the applicant represents that modern manufacturing and commercial service operations require (1)

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large floor plates; (2) mechanical systems, such as elevators, that facilitate the vertical movement of goods; and (3) loading bays and wide streets to allow for truck access and that the unique conditions of the site cannot be overcome by enlarging the building or constructing a new one with the same small floor plates; and

WHEREAS, the Board agrees with the applicant that the site's narrow width (the second narrowest in the study area); inefficient floor plates, which limit the number of potential uses; and underbuilt condition, which does not allow for it to be enlarged or demolished and re-built in a practical and feasible manner, are unique physical conditions, when considered in the aggregate and create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that the applicant submitted several previous Board grants, that identified site conditions that it accepted in its analysis of unique conditions, to support its assertion that the conditions on the subject site are similar; and

WHEREAS, the Board finds that the applicant's reliance on the Board's prior grants do not form the basis for granting or denying the subject application as each can be distinguished from the subject case and were mischaracterized in the parties' analyses; and

WHEREAS, as to the financial feasibility of the site, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an as of right warehouse/storage use on the ground floor, (2) an as of right business service establishment on the ground floor, and (3) the proposal with ground floor and cellar Use Group 6 use; and

WHEREAS, the applicant asserts that the two as of right scenarios would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, at the Board's direction, the applicant confirmed that the property valuation was based on accordingly adjusted comparables and the mezzanine space was included in the original calculations, and provided a discussion of a showroom alternative; and

WHEREAS, in response to the Board's and the Opposition's inquiry, the applicant submitted a supplemental analysis of (1) a new six-story building with business services on the first floor and JLWQA units on the upper floors and (2) an enlarged building with four additional floors to be occupied by business services on the first floor and JLWQA units on the upper floors; and

WHEREAS, the applicant's analysis concludes that neither the new or enlarged building alternatives would provide a reasonable return; and

WHEREAS, however, the Opposition asserts that both scenarios would generate reasonable rates of return; and

WHEREAS, the Board has reviewed both sets of financial analyses and concludes that the applicant's assumptions are reasonable and supported by appropriate valuation and comparables; and

WHEREAS, the Board identified several concerns with the Opposition's analysis, which contribute to its contrasting

conclusions: (1) it assumes a significantly greater amount of usable space in the business services alternatives; (2) it utilizes a capitalization rate to calculate the value of the net operating incomes of business service spaces that is low for such use and does not measure against market expectations; and (3) it does not factor premium or extraordinary costs into the calculations; and

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

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

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity are used for Use Group 6 purposes on the first floor with residential or loft space above; and

WHEREAS, the applicant submitted a diagram and photographs of local uses which reflects that the block is occupied by a mix of ground floor commercial uses and JLWQA-studio-type uses; and

WHEREAS, the applicant notes that Use Group 6 use, including an eating and drinking establishment, would be permitted as of right on the building's second floor and that a Use Group 9 catering use would be permitted throughout the building; and

WHEREAS, the applicant notes that the adjacent building to the south is occupied by the six-story Bloomingdale's building, which is accessed from Broadway and Crosby Street and the adjacent building to the north is occupied by a ground floor clothing store with entrances on Broadway and Crosby Street; and

WHEREAS, the applicant notes that every lot with a width narrower than 25 feet, within the study area, is occupied by Use Group 6 retail or eating and drinking use on its first floor; the applicant acknowledges that Use Group 6 uses may not be legal as per the certificates of occupancy in all cases; and

WHEREAS, further, the applicant notes that the existing historic two-story building will remain and that it will not be enlarged and no bulk waivers are sought; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, dated March 19, 2010; and

WHEREAS, the Opposition asserts that the characteristics of the subject block – Crosby Street between Broome Street and Spring Street – can be distinguished from other nearby blocks and that its particular characteristics are not compatible with an eating and drinking establishment use; and

WHEREAS, in response the applicant notes that (1) there are seven eating and drinking establishments operating on the first floor in the study area; and (2) eating and drinking establishments co-exist with residential use throughout the city; and

WHEREAS, the applicant notes that the nearby eating

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and drinking establishments include (1) a restaurant and bar at the northeast corner of Broome Street and Crosby Street (L'Orange Bleue), which has outdoor seating extending as far as 80 feet north of Broome Street along the east side of Crosby Street; (2) a restaurant and bar at the southwest corner of Spring Street and Crosby Street (Balthazar); and (3) a hotel and restaurant on Crosby Street, just north of Spring Street (the Crosby Street Hotel), which occupies the first floor, outdoors, and terrace level; and

WHEREAS, further, the applicant provided hours of operation and capacity for the noted establishments, which are as follows (1) L'Orange Bleue – bar closes at 2:00 a.m., capacity n/a; (2) Balthazar – bar closes at 2:00 a.m., capacity 221; (3) Crosby Street Hotel – bar closes at 1:00 a.m., capacity 112 for the first floor restaurant and 205 for the first floor total; and

WHEREAS, the Opposition also relies on the history of opposition to an eating and drinking establishment at the site, namely that associated with the application before the New York State Liquor Authority in 2002 and the Community Board's opposition; and concerns about the potential for disruptive night life to occupy the site; and

WHEREAS, the applicant asserts that it is amenable to a conditional approval of an eating and drinking establishment use to relieve concerns about night life activity that would be incompatible with nearby residential uses; and

WHEREAS, the applicant proposes the following conditions on an eating and drinking establishment use: (1) a closing time no later than 12:30 a.m., Sunday through Thursday; (2) a closing time no later than 1:30 a.m., Friday through Saturday; (3) no tables, seating or bar in the outdoor space; (4) no sound system or music in the outdoor space; and (5) a closing time of 12:00 a.m., daily, for the outdoor space; and

WHEREAS, the Board agrees with the applicant that there is a context for eating and drinking establishments within the vicinity of the site and is not persuaded by the Opposition's assertion that it should isolate a single block-long street frontage from the remainder of the applicant's study area and that, even if it did so, the Board is not persuaded that an eating and drinking establishment cannot be operated in a way that is compatible with residential use; and

WHEREAS, however, the Board believes restrictions on eating and drinking establishment use at the site, such as (1) hours of operation, (2) exclusion of the outdoor space, (3) restrictions on noise, and (4) limiting the use to a restaurant, rather than a bar, are appropriate; and

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

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

WHEREAS, the applicant asserts that the proposal for Use Group 6 use represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant represents that the site's location, with limited foot traffic, does not support a retail use and that the narrow building design and multiple floors is only suitable for a single user; and

WHEREAS, the Opposition asserts that restricted Use Group 6 use, which would exclude an eating and drinking establishment would represent a lesser variance yet still be feasible; and

WHEREAS, the Opposition asserts that the site is not uniquely narrow and has identified 11 sites with frontage of less than 20 feet, which are occupied by retail use along Crosby Street; and

WHEREAS, the Opposition also asserts that retail use has been successful along Crosby Street; and

WHEREAS, the applicant responded that (1) four of the businesses with narrow frontage on Crosby Street, prohibit general access from Crosby Street and direct patrons to their other, wider frontage on another street; and that (2) three other retailers use Crosby Street as a secondary access point to their primary access on a busier street, such as Broadway, Lafayette Street, or Spring Street; and

WHEREAS, the applicant also asserts that a number of sites with narrow frontages have narrow frontage just at the street line and then widen to a more standard width, unlike the subject site, which is narrow throughout; and

WHEREAS, the applicant adds that its research of the retail market in the near vicinity reflects that there is a significant turnover rate of retailers with frontage on Crosby Street; and

WHEREAS, as noted above, the Board has reviewed its prior decisions that the applicant and the Opposition have presented either in support or opposition to the inclusion of eating and drinking establishments and can distinguish them and, thus does not find they form the basis for a grant or denial; the Board has included a prohibition on eating and drinking establishments in at least two instances where the Community Board recommended such a limitation and the applicant obliged, which is not the situation in the subject case; and

WHEREAS, the Board notes that the inclusion of potential eating and drinking establishment use in the subject proposal which maintains the existing undersized building for occupancy by a single Use Group 6 tenant, reduces the risk and increases the viability of the site, which can only feasibly accommodate a single user and a single income stream, unlike the majority of buildings in the area, which are larger and have multiple sources of income throughout the building; and

WHEREAS, further, the Board notes that in cases where it restricted eating and drinking use, the subject buildings were substantially larger and more fully developed and primarily with new residential use that it deemed to provide the required economic relief; the Board finds each of its prior cases to be distinguishable and directs its inquiry to the specific conditions of the subject site; and

WHEREAS, accordingly, the Board finds that the proposal, for the re-use of an existing building where the proposed use is permitted as of right on the second floor, without any enlargement of the building envelope, is the minimum necessary to afford relief, based on the analysis of

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the site and the economic feasibility; and

WHEREAS, the Opposition's supplemental arguments include (1) that the applicant is required to seek a special permit from the City Planning Commission in lieu of a variance, (2) a restrictive declaration associated with the caretaker's apartment limits the use of the building to Use Group 9 use, and (3) since the DOB notice of objections was revised during the hearing process, the process should begin a-new; and

WHEREAS, as to the special permit, the applicant notes that none of the case law submitted by the Opposition sets forth a requirement that an application for a special permit is a required predicate of discretionary relief available to the applicant; and

WHEREAS, specifically the applicant asserts that the case law, which addresses the distinction between the required analysis for a special permit compared to that for a variance and states that variances should be granted sparingly, whereas special permits, absent uniqueness and neighborhood character findings, among other things, require less scrutiny; and

WHEREAS, the applicant asserts that the case law, which confirms that variance standards are more restrictive than those for a special permit, actually supports the applicant's choice to file for the more restrictive form of relief; and

WHEREAS, the Board recognizes the principles set forth in the Opposition's case law that there is a higher threshold for obtaining a variance than for a special permit and that, due to the complexity of the findings, including that a site must have unique conditions, variances are granted sparingly; and

WHEREAS, however, the Board does not find that the case law supports the Opposition's assertion that the variance application is inappropriately before the Board; and

WHEREAS, instead, the Board finds that the variance process, with its five required findings, actually reflects the breadth of analysis that the Opposition seeks and that the Opposition's arguments that the special permit should be sought first are actually incompatible with the arguments that they request that the highest threshold be set for granting relief to allow the proposed Use Group 6 use throughout the building; and

WHEREAS, as to the restrictive declaration, the applicant states that it was required to allow for a caretaker's apartment accessory to the Use Group 9 use and that, without the Use Group 9 use, the restrictive declaration is moot; and

WHEREAS, the Board notes that the restrictive declaration is an agreement between the applicant's predecessor in interest and DOB and it is not subject to its review, but adds that DOB states that once the Use Group 9 use is eliminated, the restrictive declaration has no effect; 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 Type I Action

pursuant to Section 617.4 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA076M, dated August 8, 2010; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §72-21, to permit within an M1-5B zoning district within the SoHo Cast Iron Historic District, the conversion of an existing two-story building to a Use Group 6 use (including eating and drinking establishment), contrary to ZR § 42-14; *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 October 6, 2010"—thirteen (13) sheets; and *on further condition*:

THAT if the site is operated as an eating and drinking establishment, the term of the grant shall expire on February 15, 2014;

THAT the following shall be the operating conditions for any eating and drinking establishment use at the site: (1) the use is limited to a restaurant which may include a bar only if it is accessory to the restaurant, but excludes a bar or a nightclub as the primary use; (2) the maximum seating capacity, including any accessory bar seating, is limited to 120 occupants; (3) a closing time no later than 11:00 p.m., Sunday through Thursday; (4) a closing time no later than 12:00 a.m., Friday through Saturday; and (5) any use of the outdoor space is prohibited;

THAT the operation of the site shall be in compliance with Noise Code regulations;

THAT the above conditions shall be noted on the Certificate of Occupancy;

THAT the internal floor layouts on each floor shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only;

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

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

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

178-10-BZ

CEQR #11-BSA-024K

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the legalization and enlargement of a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 13, 2010, acting on Department of Buildings Application No. 320192867, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of .50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with continued hearings on December 14, 2010 and January 25, 2011, and then to decision on February 15, 2011; and

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

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

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,146 sq. ft. (0.54 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,146 sq. ft. (0.54 FAR) to 4,013 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 56 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 3’-8¾” along the northern lot line (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans reflecting that portions of the existing foundation walls, first and second floor walls, and floor joists on the first floor will remain; and

WHEREAS, at hearing, the Board also questioned the floor area calculations at the attic level; and

WHEREAS, in response, the applicant submitted revised plans clarifying which portions of the attic are included in the floor area calculations; and

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

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

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

WHEREAS, therefore, the Board has determined that

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 13, 2010”-(6) sheets and “January 19, 2011”-(6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,013 sq. ft. (1.0 FAR); an open space ratio of 56 percent; a side yard with a minimum width of 3’-8¾” along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

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

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

181-10-BZ

CEQR #11-BSA-026K

APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.

SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential conversion of an existing building. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope Street, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 20, 2010, acting on Department of Buildings Application No. 320012525, reads in pertinent part:

“Provide off-street parking space under ZR 25-23 equal to at least 50% of the number of dwelling units or obtain waiver from the BSA under ZR 73-46”; and

WHEREAS, this is an application under ZR §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, a waiver of the required number of accessory parking spaces for the proposed residential conversion of an existing building, contrary to ZR § 25-23; and

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

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application with the following conditions: (1) the applicant modifies its application to request a partial parking waiver rather than a full waiver; and (2) the applicant agrees to pursue a long term lease at one or more of the parking lots identified and continues to work with the Community Board to maximize parking opportunities on those lots through the utilization of alternative parking methods, such as stackers; and

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

WHEREAS, the subject site is located on an irregularly-shaped corner lot bounded by Metropolitan Avenue to the north, Roebling Street to the west, and Hope Street to the south, within an M1-2/R6A (MX-8) zoning district; and

WHEREAS, the site has a lot area of 31,615 sq. ft.; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building, with commercial uses on the first floor and residential apartments on the second floor through sixth floor; and

WHEREAS, the applicant states that the subject building lacks a certificate of occupancy for residential use and that the owner has applied for an alteration permit at the Department of Buildings for conversion of the second floor through sixth floors to a total of 90 residential apartments;

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and

WHEREAS, pursuant to ZR § 25-23, 45 parking spaces are required for the proposed 90 dwelling units; and

WHEREAS, the applicant requests that the Board grant a special permit under ZR § 73-46 to allow for the waiver of the required 45 parking spaces; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board's review was limited to the request for a parking waiver pursuant to ZR § 73-46; and

WHEREAS, pursuant to ZR § 73-46, the Board may, in the subject zoning district, grant a special permit that would allow a waiver of the accessory off-street parking spaces required for the dwelling units created by a residential conversion under the applicable ZR provision; and

WHEREAS, specifically, ZR § 73-46(a) requires the Board to find that there is no practical possibility of providing the required number of parking spaces on the same zoning lot because of insufficient open space and the prohibitive cost of structural changes necessary to provide the required spaces within the building; and

WHEREAS, the applicant states that, pursuant to ZR § 25-62, an area of 300 sq. ft. is required for each parking space; therefore 45 unattended parking spaces would require a minimum of 13,500 sq. ft.; and

WHEREAS, the applicant states that there is only 360 sq. ft. of open space on the subject lot, which is sufficient to accommodate only one parking space; and

WHEREAS, the applicant further states that the 360 sq. ft. of open space on the lot is used as an off-street loading area for the building, and if it were eliminated in favor of a parking space loading would have to take place on the street; and

WHEREAS, due to the insufficiency of open space to accommodate parking, the applicant analyzed a scheme for providing the required spaces within the cellar level of the building; and

WHEREAS, the applicant represents that creating parking spaces in the cellar of the building entails structural challenges that would be cost-prohibitive to overcome and would result in the displacement of residents and businesses; and

WHEREAS, specifically, the applicant states that in order to provide cellar parking, a portion of the building on both Hope Street and Metropolitan Avenue would have to be demolished on the first floor in order to create access ramps, structural walls would have to be removed, and structural supports would have to be installed in their place; and

WHEREAS, the applicant further states that, due to the existence of a fire stair which cannot be legally eliminated, there would be an inadequate turning radius for a vehicle to turn westward into the cellar, and there would also be inadequate circulation space in general; and

WHEREAS, the applicant submitted a proposed

contract for the construction of a cellar parking area at the site, reflecting a cost of \$7,320,000; and

WHEREAS, based upon the above, the Board agrees that there is no practical possibility of providing the required number of parking spaces on the subject lot because of insufficient open space and the prohibitive cost of structural changes necessary to provide the required spaces within the building; and

WHEREAS, ZR § 73-46(b) requires the Board to determine that there is no practical possibility of providing the required number of parking spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, according to the standard calculation set forth in the Zoning Resolution, at least 13,500 sq. ft. of lot area would be required to accommodate the 45 parking spaces that cannot be provided on-site; and

WHEREAS, the applicant submitted a survey of the 30 lots that have either all or part of their lot area within 1,200 feet of the site and have lot areas of at least 13,500 sq. ft.; and

WHEREAS, the lot survey indicates that 28 of these sites were found to be unsuitable because they were either occupied with substantial improvements or under construction; and

WHEREAS, the survey identified two vacant sites that appeared to be available for off-site parking: (1) a 17,604 sq. ft. site located on Lot 19 in Block 2369 ("Lot 19"); and (2) a 21,000 sq. ft. site located on Lot 10 in Block 2371 ("Lot 10"); and

WHEREAS, the applicant notes that only 9,000 sq. ft. of Lot 10 is located within a 1,200-ft. radius of the site, which is not suitable to accommodate all 45 of the required parking spaces; and

WHEREAS, the applicant submitted photographs and DOB records reflecting that a bank building is currently under construction on Lot 19; and

WHEREAS, based upon the above, the Board agrees that there is no practical possibility of providing the required number of parking spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, however, while ZR § 73-46 permits the Board to waive the required accessory parking, the Board must analyze the impact that such a reduction might have on the surrounding community; and

WHEREAS, the applicant asserts that the conversion of the building will not generate significant parking demand; and

WHEREAS, the applicant states that the unit mix in the building of studio and one-bedroom apartments is amenable to single persons or young couples having no children, who depend on public transportation to travel to work and who will be able to shop in the neighborhood due to the recent growth in local services; and

WHEREAS, the applicant represents that the site is served by: (1) the Bedford Avenue and Lorimer Street stations of the L subway line; (2) the B62, B24 and Q69 bus lines; and (3) nearby bike lanes which are part of a citywide

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bike lane network; and

WHEREAS, the Board requested the applicant to explain whether there was sufficient off-site space to accommodate parking overflow; and

WHEREAS, in response, the applicant submitted a survey conducted between 7:00 p.m. and 10:00 p.m. on a weekday evening which reflected that 202 curbside parking spaces were available within an 800-foot radius of the site, with an additional 39 parking spaces available at off-street parking lots; and

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

WHEREAS, the special permit will not interfere with any public improvement projects; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-46 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA026K, dated September 20, 2010; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, the waiver of the 45 required accessory parking spaces for the proposed residential conversion of an existing building, contrary to ZR § 25-23; *on condition* that all work

shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received September 20, 2010" – thirteen (13) sheets; and *on further condition:*

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

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

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

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

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug.

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.

189-09-BZ

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

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

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

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 5,

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

190-09-A

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

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

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

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

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

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Strofolino, 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 – None.

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

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, 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 and Robert B. Pauls.

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

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for adjourned hearing.

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 and Carlos deGonseca.

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

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to March 8,

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2011, at 1:30 P.M., for decision, hearing closed.

218-10-BZ

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) for the construction of a four-story school (*Brownsville Ascend Charter School*). C8-2 zoning district. PREMISES AFFECTED – 123 East 98th Street, aka 1 Blake Avenue, corner of the intersection of East 98th and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Emily Simons, Jeffrey Smithline and Soly Bawakeh.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for continued hearing.

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee. SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Andres Puerta and Dan Walcoff.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for continued hearing.

606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equities, LP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Andres Puerta and Dan Walcoff.

ACTION OF THE BOARD – Laid over to March 8,

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

234-10-BZ

APPLICANT – Moshe M. Friedman, for Labe Twerski, owner.

SUBJECT – Application December 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue K, north side, 100' east of intersection of Avenue K and East 21st Street, Block 7603, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

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 8, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.