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# 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.

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Volume 96, Nos. 17-19

May 12, 2011

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## DIRECTORY

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EILEEN MONTANEZ

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Tuesday, May 3, 2011**

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164-60-BZ	100-20 Metropolitan Avenue, Queens
516-75-BZ	330 East 61 <sup>st</sup> Street, aka 328 East 61 <sup>st</sup> Street, Manhattan
406-82-BZ	2411 86 <sup>th</sup> Street, Brooklyn
866-85-BZ	2338 Cambreleng Avenue, Bronx
216-97-BZ	1384 Carroll Street, aka 352 Kingston Avenue, Brooklyn
11-00-BZ	550 5 <sup>th</sup> Avenue, Bronx
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435-74-BZ	552 Midland Avenue, Staten Island
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**Affecting Calendar Numbers:**

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165-10-BZ thru 172-10-BZ	1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37 <sup>th</sup> Street, Brooklyn
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45-10-BZ	1413-1429 Edward L. Grant Highway, Bronx
61-10-BZ	183 East Broadway, Manhattan
119-10-BZ	787 Cornaga Avenue, Queens
196-10-BZ	234 East 53 <sup>rd</sup> Street, Manhattan
13-11-BZ	1040 East 26 <sup>th</sup> Street, Brooklyn
16-11-BZ	181-30 Aberdeen Road, Queens
20-11-BZ	30 West 18 <sup>th</sup> Street, Manhattan

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# DOCKET

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New Case Filed Up to May 3, 2011  
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**44-11-A**

74 Tioga Walk, West side of Tioga Walk 332.6' north of Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family dwelling, contrary to General City Law Section 35, Article 3. R4 Zoning District R4 district.  
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**45-11-A**

29 Kildare Walk, East side of Kildare Walk 223" south of Oceanside Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family home, contrary to General City Law Section 36, Article 3 and the proposed upgrade of the private disposal system located partially within the bed of the Service Road is contrary to Department of Buildings Policy . R4 Zoning district . R4 district.  
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**46-11-A**

57 Bedford Avenue, East side of Bedford Avenue 174 feet north of 12th Avenue., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14**. Proposed reconstruction of an existing single family home , contrary to General City Law Section 36, Article 3 and the proposed upgrade on the existing non-complying private disposal system in the bed of the service road contrary to Department of Buildings Policy .R4 Zoning District R4 district.  
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**47-11-BZ**

1213 Bay 25th Street, West side of Bay 25th between Bayswater Avenue and Healy Avenue., Block 15720, Lot(s) 67, Borough of **Queens, Community Board: 14**. Variance (§72-21) to allow a three-story yeshiva with dormitories, contrary to bulk regulations. R2 district.  
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**48-11-BZ**

60 Madison Avenue, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street., Block 856, Lot(s) 58, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment. C5-2 zoning district. C5-2 district.  
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**49-11-BZ**

135 West 20th Street, North side of West 20th Street between 6th and 7th Avenues., Block 796, Lot(s) 18, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment. C6-3A zoning district. C6-3A district.  
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**50-11-A**

134-07 87th Avenue, North side of 87th Avenue, 50 feet east of the corner formed by the intersection of 87th Avenue and 134th Street., Block 9630, Lot(s) 11, Borough of **Queens, Community Board: 9**. Appeal seeking a common law vested to continue development under prior zoning district. R4-1 zoning district. R4-1 district.  
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**51-11-BZ**

1226 East 26th Street, West side of East 26th Street between Avenue L and Avenue M., Block 7643, Lot(s) 55, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space 23-141; yard less than the required rear yard 23-47. R2 zoning district. R2 district.  
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**52-11-A**

South Street & John Street, East South Street, at John Street, under the FDR Drive., Block 73, Lot(s) 2,8, Borough of **Manhattan, Community Board: 1**. Appeal for a variance to Appendix G, Section G304.1.2 of the NYC Building Code to allow for a portion of a structure to be located below a food zone. C2-8 district.  
-----

**53-11-BZ**

154 Madison Street, Southeast corner of Madison Street and Pike Street., Block 274, Lot(s) 24, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to allow an eight-story mixed use residential building with ground floor community facility. C8-4 district.  
-----

**54-11-BZ**

6010 Bay Parkway, West side of Bay Parkway between 60th Street and 61st Street., Block 5522, Lot(s) 36 & 42, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district. R6/C1-3 district.  
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# DOCKET

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**55-11-BZ**

2914 Third Avenue, Through lot located approx. 51 ft. south of East 152nd Street, with approx. 45 ft. of frontage on Third Avenue and 75 ft. of frontage on Bergen Avenue., Block 2362, Lot(s) 13, Borough of **Bronx, Community Board: 1.**

Special Permit (§73-36) to allow the operation of a physical culture establishment. C4-4 zoning district. C4-4 district.

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**56-11-BZ**

957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I., Block 6510, Lot(s) 68, Borough of **Brooklyn, Community Board: 12.** Variance (§72-21) to allow the enlargement to an existing one-family semi-detached residence, contrary to bulk regulations. R2X district.

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**57-11-BZ**

208 West 125th Street, Through lot with frontage on West 125th Street and West 124th Street located approximately 63' west of Adam Clayton Powell Boulevard., Block 193., Lot(s) 37, Borough of **Manhattan, Community Board: 10.**

Special Permit (§73-36) to allow the operation of a physical culture establishment. C6-3/C4-4D. C6-3/C4-4D district.

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**58-11-BZ**

20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st. Street & the westerly side of Madison Avenue., Block 1502, Lot(s) 59 & 12, Borough of **Manhattan, Community Board: 08.** Variance (§72-21) for the construction of a proposed Connector within rear yard. R8B district.

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

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# CALENDAR

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**MAY 17, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 17, 2011, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**156-03-BZ**

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a seventeen story mixed-use commercial / community facility / residential condominium building which expired on December 13, 2009. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince street and Farrington street, Block 4958, Lot 38 & 48, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**101-05-BZ**

APPLICANT –Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a previously granted Variance (ZR §72-21) for the construction of a 7 story hotel with penthouse (The Greenwich Hotel) which seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/TMU(A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**APPEALS CALENDAR**

**14-11-A**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Building interpretation that when cellar exceeds 49% of the total floor space of the residence it is not considered an accessory use as defined by ZR §12-10. R-2 Zoning district.

PREMISES AFFECTED – 1221 East 22<sup>th</sup> Street, between Avenues K and L, Block 7622, Lot 21, Borough of

Brooklyn.

**COMMUNITY BOARD #14BK**

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**94-10-A**

APPLICANT – Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Twenty-Seven-Twenty Four Realty Corporation, owner.

SUBJECT – Application May 26, 2010 – Appeal challenging the Department of Buildings determination that the signs located on the north and south walls of the subject building are not a continuance of a legal nonconforming use. C2-2 Zoning district.

PREMISES AFFECTED – 27-24 21<sup>st</sup> Street, west side of 21<sup>st</sup> Street south of Astoria Boulevard, Block 539, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**MAY 17, 2011, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 17, 2011, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**3-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (ZR §23-47). R-2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>nd</sup> Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**4-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2<sup>nd</sup> Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to permit the construction of a three-story synagogue that is contrary to bulk regulations lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31 and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2<sup>nd</sup> Street, aka 389 Quentin Road, northeast corner of East 2<sup>nd</sup> Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

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# CALENDAR

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**10-11-BZ & 11-11-BZ**

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (ZR §23-45) and rear yard regulations (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100' southwest of Marine Way, Block 4050, Lot 53, 56, 59, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**19-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yards §23-461 and less than the required rear yard §23-47. R-2 zoning district.

PREMISES AFFECTED – 1271 East 24<sup>th</sup> Street, east side of East 24<sup>th</sup> Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 3, 2011  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**164-60-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Luciani Enrica Melchiore, owner; Steven Scott, Inc., lessee.

SUBJECT – Application December 7, 2010 – Extension of Term (§11-411) for an automotive service station (UG 16B) (*Sunoco*) with accessory uses which expired on April 10, 2010; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, southeast corner of Metropolitan Avenue and 70<sup>th</sup> Road, Block 3895, Lot 32, Borough of Queens.

**COMMUNITY BOARD #6Q**

APPEARANCES –

For Applicant: Steven Sulfaro.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued operation of an automotive service station, which expired on April 10, 2009; and

WHEREAS, a public hearing was held on this application on March 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

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

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Metropolitan Avenue and 70<sup>th</sup> Road, within a C1-3 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 1961 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on June 8, 1999, the Board granted a ten year extension of term, which expired on April 10, 2009; and

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

WHEREAS, at hearing, the Board raised concerns about the condition of the plantings on the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting the replacement of the planting areas along the rear of the site and along the 70<sup>th</sup> Road frontage; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 10, 1961, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 10, 2009, to expire on April 10, 2019; *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 December 7, 2010’–(3) sheets and ‘Received March 30, 2011’–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on April 10, 2019;

THAT the above condition shall appear on the certificate of occupancy;

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

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. 420259080)

Adopted by the Board of Standards and Appeals May 3, 2011.

**516-75-BZ**

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

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

PREMISES AFFECTED – 330 East 61<sup>st</sup> Street, aka 328 East 61<sup>st</sup> Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

# MINUTES

## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Jonathan Grippo.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), an extension of time to obtain a certificate of occupancy, and an amendment to reflect an increase in floor area at the site and the change in operator of the PCE; and

WHEREAS, a public hearing was held on this application on March 15, 2011 after due notice by publication in the *City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 2011; and

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

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

WHEREAS, the subject premises is located on a through lot bounded by East 60<sup>th</sup> Street to the south and East 61<sup>st</sup> Street to the north, between First Avenue and Second Avenue, within a C8-4 zoning district; and

WHEREAS, the site is occupied by a five-story commercial building with a rooftop terrace; and

WHEREAS, the PCE occupies 101,646 sq. ft. of floor area on a portion of the first floor, the entire second through fifth floors, and the roof of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 5, 1975 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story building to be occupied by a tennis club with roof tennis facilities, which encroaches on the required rear yard and penetrates the sky exposure plane; and

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

WHEREAS, most recently, on October 17, 2000, the Board granted an amendment to reflect the addition of Lot 37 to the site, and to permit a change in use of a portion of the subject building to a PCE, for a term of ten years; a condition of the grant was that a new certificate of occupancy be obtained within two years; and

WHEREAS, the applicant now seeks to extend the term of the PCE use for an additional ten years, and to extend the time to obtain a certificate of occupancy; and

WHEREAS, the applicant also requests an amendment to permit an increase in the floor area of the PCE from 100,272 sq. ft. to 101,646 sq. ft.; and

WHEREAS, the applicant states that the addition of 1,374 sq. ft. of floor area at the second floor mezzanine and third floor is due to the conversion of previously “unoccupied” mechanical equipment areas to floor area-generating offices and storage areas; and

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

WHEREAS, the PCE is now operated as The Sports Club/LA; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 5, 1975, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 17, 2010, to expire on October 17, 2020, to extend the time to obtain a certificate of occupancy for one year, to expire on May 3, 2012, and to permit the noted increase in floor area of the PCE and the change in the operator of the PCE; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received December 17, 2010’-(15) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 17, 2020;

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

THAT a new certificate of occupancy shall be obtained by May 3, 2012;

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

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

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

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application February 7, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on

# MINUTES

January 22, 2009; waiver of the rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on March 29, 2011 after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

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

WHEREAS, the site is located on the east corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> street, within a C1-3(R5) zoning district; and

WHEREAS, the site is operated as a McDonalds’s eating and drinking establishment; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment; and

WHEREAS, the special permit was subsequently extended at various times and will expire on January 18, 2013; and

WHEREAS, however, a condition of the prior grant was that a new certificate of occupancy be obtained by January 22, 2009; and

WHEREAS, the applicant has not obtained a new certificate of occupancy; and

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

WHEREAS, the Board directed the applicant to remove banner signs on the fence around the site; and

WHEREAS, in response, the applicant provided photographs which reflect that the banner signs have been removed; and

WHEREAS, based upon its review of the record, the Board finds that the proposed additional one year to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives its Rules of Practice and Procedure, reopens and amends the resolution, dated January 18, 1983, so that as

amended this portion of the resolution shall read: “to permit an extension of one year to obtain a certificate of occupancy, to expire on May 3, 2012; on condition that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and on further condition:

THAT the grant shall expire on January 18, 2013;

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

THAT a certificate of occupancy shall be obtained by May 3, 2012;

THAT all conditions from the prior resolution 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. 310120142)

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 866-85-BZ

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

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

R7-1 zoning district.

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

## COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term for a previously granted variance permitting an open parking lot, which expired on May 12, 2007, and an extension of time to obtain a Certificate of Occupancy, which expired on November 23, 2000; and

WHEREAS, a public hearing was held on this

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application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 2011; and

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

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Cambreleng Avenue, south of Crescent Avenue, within an R7-1 zoning district; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1987 when, under the subject calendar number, the Board granted a variance to permit open parking and storage of motor vehicles for a term of ten years, to expire on May 12, 1997; and

WHEREAS, on November 23, 1999, the Board extended the term for ten years from the date of the prior grant, to expire on May 12, 2007; and

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

WHEREAS, the applicant also notes that the site has in the past been erroneously referred to as “2336 Cambreleng Avenue” and that the subject address is the correct way to identify the site; and

WHEREAS, at hearing, the Board directed the applicant to provide striped parking spaces so that it complies with the approved limit of 14 spaces; and

WHEREAS, in response, the applicant provided photographs which reflect that the parking lot has been painted to reflect spaces for 14 cars; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and time to obtain a Certificate of Occupancy are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 12, 1987, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of ten years from May 12, 2007, to expire on May 12, 2017, and to grant a term of one year from the date of this grant to obtain a certificate of occupancy by May 3, 2012, *on condition* that the use of the site shall substantially conform to the approved drawings, filed with this application marked ‘Received February 11, 2011’ - (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2017;

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

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

THAT a new certificate of occupancy be obtained by May 3, 2012;

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.”

(Alt. No. 2/1985)

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 216-97-BZ

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

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

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

## COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

**ACTION OF THE BOARD** – Application granted on condition.

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for an amendment to convert existing cellar storage space to medical office space associated with the existing medical office use; and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 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 9, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Carroll Street and Kingston Avenue, in an R2 zoning district; and

WHEREAS, the site is occupied by a four-story residential building with accessory storage space (Use Group 2) and medical office space (Use Group 4) in the cellar; and

WHEREAS, the existing medical office space occupies 2,261.56 sq. ft. of floor space in the cellar of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 1998 when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-125, to allow the use of a portion of the cellar of the

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existing building for medical office space; and

WHEREAS, the applicant proposes to increase the medical office space within the cellar from 2,261.56 sq. ft. to 3,389.56 sq. ft.; and

WHEREAS, the applicant notes that ZR § 73-125 has been eliminated from the ZR, but that the Board has jurisdiction to amend previously-granted special permits; and

WHEREAS, the applicant cites to ZR § 11-41 *et seq* which allows for an extension of an existing non-conforming use provided that the conditions of ZR § 11-412 are met, which includes a limit on any enlargement to 50 percent of the floor area occupied by the pre-existing non-conforming use; and

WHEREAS, the applicant notes that its proposed conversion of the existing cellar storage space to additional medical office space does not reflect an increase in zoning floor area (since cellar space is exempt from floor area calculations), will not affect the building envelope, and, at 1,128 sq. ft. of floor space, is less than 50 percent of the size of the existing medical office space; and

WHEREAS, the applicant asserts that the proposed conversion will not have a negative impact on the use or enjoyment of nearby sites and that no adverse effects nor any significant increase in traffic are anticipated; and

WHEREAS, the applicant submitted a traffic and parking analysis, which reflects that the majority of patients and staff will arrive by foot and that for those arriving by car, there is sufficient on-street parking within the study area to accommodate demand; and

WHEREAS, the applicant notes that the entrance to the medical center will remain on Kingston Avenue, a commercial thoroughfare; and

WHEREAS, the Board notes that ZR § 11-41 *et seq* apply only to actions prior to 1961, however, it finds that the principles that the applicant cites reflect that the proposal is within the spirit of ZR provisions that anticipate the expansion of non-conforming uses, which have been approved under an earlier zoning framework; and

WHEREAS, accordingly, based upon its review of the record, the Board finds the requested amendment to the previous grant appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on June 23, 1998, so that as amended this portion of the resolution shall read: “to permit the noted increase in cellar floor space occupied by medical office use, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘December 28, 2011’ - (2) sheets; and *on further condition*:

THAT the cellar floor space occupied by the medical office be limited to 3,389.56 sq. ft., as reflected on the BSA-approved plans;

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

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

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 300672662)

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 11-00-BZ

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

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

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

### COMMUNITY BOARD #7BX

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 276-02-BZ

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

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete construction and obtain a certificate of occupancy, and an amendment to a previously

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approved special permit for the enlargement of a single-family home; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 15, 2011, March 1, 2011 and March 29, 2011, and then to decision on May 3, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (the "Opposition"), citing the following primary concerns: (1) the proposed FAR is excessive and out of context with the surrounding neighborhood; (2) the applicant is not retaining sufficient portions of the existing floors and foundations; (3) the current proposal is substantially different from what was approved in the Board's original grant and the applicant should be required to apply for a new special permit; and (4) there are inconsistencies in the proposed plans; and

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

WHEREAS, the subject site has a total lot area of 2,973 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,320 sq. ft. (0.44 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since February 10, 2004 when, under the subject calendar number, the Board granted a special permit under ZR § 73-622, to allow an enlargement to an existing single-family home, which created non-compliances with regard to floor area ratio ("FAR"), open space ratio, lot coverage, side yards and rear yard; and

WHEREAS, specifically, the Board permitted the enlargement of the subject home with the following parameters: a floor area of 2,676 sq. ft. (0.9 FAR), a lot coverage of approximately 49 percent, a total height of 24'-7", a side yard with a width of 0'-7" along the northern lot line, a side yard with a width of 5'-9" along the southern lot line, and a rear yard with a depth of approximately 21'-4"; and

WHEREAS, the Board notes that the applicant never commenced construction pursuant to the prior grant; and

WHEREAS, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy, which expired on February 10, 2008; and

WHEREAS, the applicant also seeks an amendment to permit modifications to the plans previously approved by the Board; and

WHEREAS, although the subject application involves an amendment to a previous grant, the Board finds it appropriate to analyze the proposed home pursuant to the criteria of the special permit under ZR § 73-622, which was the subject of the original grant; and

WHEREAS, the Board notes that the site is within the

boundaries of a designated area in which the special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from the previously approved 2,676 sq. ft. (0.9 FAR) to 2,980 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,487 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing footprint for the home, which represents a reduction in the lot coverage from what was previously approved by the Board, from approximately 49 percent to 44 percent (the maximum permitted lot coverage is 35 percent); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 0'-7" along the northern lot line, and to reduce the width of the side yard along the southern lot line from the previously approved 5'-9" to 5'-1" (two side yards with minimum widths of 5'-0" and 8'-0" are required); and

WHEREAS, the applicant also proposes to maintain the existing rear yard with a depth of 28'-1", which represents an increase from the previously approved rear yard depth of approximately 21'-4" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the applicant also proposes to increase the total height of the proposed home from the previously approved 24'-7" to 31'-11", which remains in compliance with the underlying zoning regulations; and

WHEREAS, the applicant initially proposed to amend the previously approved enlargement by increasing the floor area to 3,392 sq. ft. (1.14 FAR) and increasing the total height to 35'-0"; and

WHEREAS, at hearing, the Board raised concerns that the proposed FAR was out of context for the surrounding neighborhood, and noted that its previous approval was for a home with an FAR of 0.90; and

WHEREAS, in response, the applicant submitted examples of several homes in the vicinity of the site which purportedly established that there are homes in the surrounding neighborhood with FARs similar to the 1.14 FAR originally proposed by the applicant; and

WHEREAS, the Board found several errors and inaccuracies in the information submitted by the applicant, and the applicant failed to convince the Board that there are homes in the surrounding area with FAR's similar to that proposed by the applicant, either pre-existing or through Board approval; and

WHEREAS, accordingly, at the Board's direction the applicant revised its plans to provide a floor area of 2,980 sq. ft. (1.0 FAR) and a total height of 31'-11"; and

WHEREAS, the Opposition argues that the revised proposal with a reduced FAR of 1.0 is still excessive; and

WHEREAS, in response, the applicant submitted land use studies reflecting that there is at least one home on the subject block with an FAR of 0.99, and that there are many other homes in the surrounding area with FARs of 1.0; and

WHEREAS, as further evidence that the proposed home fits within the character of the surrounding neighborhood, the applicant notes that the proposed amendment provides a larger rear yard and a smaller footprint than what was previously

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approved, and the proposed front yard and height are in compliance with the underlying zoning regulations; and

WHEREAS, as to the Opposition's contention that the applicant is not retaining sufficient portions of the existing home, the Board notes that the applicant submitted revised drawings reflecting that 100 percent of the existing cellar walls and 75 percent of the existing first floor walls will be retained; and

WHEREAS, as to the Opposition's contention that the applicant should be required to apply for a new special permit, the Board notes that the Opposition has provided no evidence to support its claim that the subject application is not properly before the Board as an amendment to the previous grant; and

WHEREAS, as to the Opposition's claims with regard to inconsistencies and errors in the proposed plans, the Board notes that its approval is limited to the specific zoning relief provided by ZR § 73-622, pursuant to which the original application was granted, and that compliance with all other aspects of the Zoning Resolution and Construction Code is subject to review and approval by the Department of Buildings; and

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

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

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

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy and the noted modifications to the approved plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, as adopted on February 10, 2004, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy for a term of four years, to expire on May 3, 2015, and to permit the noted modifications to the BSA-approved plans; *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 April 12, 2011'-(16) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,980 sq. ft. (1.0 FAR); a maximum lot coverage of 44 percent; a total height of 31'-11"; a side yard with a minimum width of 0'-7" along the northern lot line; a side yard with a minimum width of 5'-1" along the southern lot line; and a rear yard with a minimum depth of 28'-1", as illustrated on the BSA-approved plans;

THAT substantial construction shall be completed and a certificate of occupancy shall be obtained by May 3, 2015;

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."

(DOB Application No. 320205318)

Adopted by the Board of Standards and Appeals, May 3, 2011.

## 435-74-BZ

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

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

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

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 24, 2011, at 10 A.M., for decision, hearing closed.

## 188-78-BZ

APPLICANT – Mark Verkhosky, for Anthony Beradi, owner; Spiro Ioannou, lessee.

SUBJECT – Application May 4, 2010 – Amendment (§11-412) to a Variance (§72-21) to add automobile body and sales (UG16) to an existing (UG16) automobile repair and laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, Block 6313, Lot 31, Borough of Brooklyn.

APPEARANCES –

For Applicant: Ronny A. Livian.

**ACTION OF THE BOARD** – Laid over May 17, 2011, at 10 A.M., for adjourned hearing.

## 95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178<sup>th</sup> Street Associates, LLC, owner; TSI Forest

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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 70<sup>th</sup> Avenue, Block 3237, Lot 30, Borough of Queens.

## COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 17, 2011, at 10 A.M., for decision, hearing closed.

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## 289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.

SUBJECT – Application January 22, 2010 – Extension of Term of a variance (§72-21) for a parking facility accessory to a permitted use (UG16 automotive repair and accessory sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.

PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100’ southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 10 A.M., for continued hearing.

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## 273-00-BZ

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

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

PREMISES AFFECTED – 3 West 33<sup>rd</sup> Street, 1.07’ southwest of West 33<sup>rd</sup> Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over May 24, 2011, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 221-10-A

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

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code. R3-1 zoning district

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

### COMMUNITY BOARD #10BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application denied.

THE VOTE TO GRANT –

Affirmative:.....1

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

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to the determination of the First Deputy Commissioner of the Department of Buildings (“DOB”), dated November 24, 2010, issued in response to a request to reconsider an objection based on Administrative Code § 28-104.8.2 in relation to Alteration 1 Job Application No. 310089123 (“App. No. 310089123”), for the enlargement of a single-family home at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Your request to remove the Objection citing Section 28-104.8.2 of the Administrative Code of the City of New York which states “Based on the decisions and orders issued in *Gershon v. Cunningham*, Index No. 26363/06, the court determined that the partially completed enlargement on the zoning lot encroaches onto the adjacent property at 127 87<sup>th</sup> Street, BK.” is hereby denied. Pursuant to Section 104.8.2 of the Administrative Code, a job application must contain a signed statement by the owner of a zoning lot stating that the applicant is authorized to make the job application. As indicated in the attached October 4, 2010 letter to your attorney, a review by the DOB and the NYC Law Department of a complaint by the adjacent property owner at 127 87<sup>th</sup> Street, BK and of the decisions and orders issued in the aforementioned civil litigation reveals that the court determined that the partially completed enlargement on your zoning lot, which is filed under this Job Application No. 310089123, encroaches onto the adjacent property. Since you have not received authorization by the owner of 127 87<sup>th</sup> Street, BK to perform construction on his

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zoning lot and since the court has determined that this construction encroaches onto his zoning lot, the Department can not remove this objection until either the court's findings are overturned or the encroachment is removed; and

WHEREAS a public hearing was held on this application on April 5, 2011 after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

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

WHEREAS, the instant appeal is filed by Robert Cunningham, owner of the subject home located at 123 87<sup>th</sup> Street (the "Appellant"); and

WHEREAS, DOB was represented by counsel in this proceeding; and

WHEREAS, the owner of a home located at 127 87<sup>th</sup> Street adjacent to the subject property to the east (hereinafter, the "Adjacent Owner" and the "Adjacent Property"), was represented by counsel in this proceeding; and

WHEREAS, the Appellant, DOB and counsel for the Adjacent Owner made submissions to the Board concerning the instant appeal; and

WHEREAS, State Senator Martin J. Golden submitted written testimony in opposition to the instant appeal; and

WHEREAS, several local residents provided written and oral testimony in opposition to the instant appeal; and

WHEREAS, the subject site is located on the north side of 87<sup>th</sup> Street between Colonial Road and Ridge Boulevard, in an R3-1 zoning district within the Special Bay Ridge District, and is occupied by a fully-detached, two-story, single-family home; and

WHEREAS, the subject home has a non-complying side yard of 0'-9" along the western lot line and a complying side yard of approximately 23'-8" along the eastern lot line; and

WHEREAS, the Appellant proposes to enlarge the existing single-family home by adding a horizontal extension up to the eastern lot line and demolishing a portion of the existing home in order to provide a side yard with a minimum width of 8'-0" along the western lot line; partial construction has been completed at the site, consisting of steel beams and concrete masonry walls abutting the Adjacent Property with a height of approximately 17'-0" (the "Completed Construction"); and

WHEREAS, the adjacent home is built to the common lot line; and

WHEREAS, this appeal concerns the authorization requirement in the Administrative Code ("AC"), at § 28-104.8.2, which DOB invoked when it denied the Appellant's request to approve App. No. 310089123 and permit construction at the site, based on DOB's determination that a court order found that the Completed Construction on the subject site encroached onto the Adjacent Property; and

WHEREAS, as clarified in a subsequent submission by DOB, in addition to evidence of the Adjacent Owner's consent, the recordation of zoning lot merger documents would also be required in order to reinstate the permit because the Completed

Construction encroaches onto the Adjacent Property, which is a separate zoning lot; and

## PROCEDURAL HISTORY

WHEREAS, the Board notes that the Appellant has filed at least four job applications associated with the proposal (Job Application Nos. 310089123, 301362488, 301376767 and 320022747), but that the Board's review is limited to the Final Determination, which only concerns App. No. 310089123; and

WHEREAS, on February 5, 2008, the Appellant filed App. No. 310089123 to enlarge the existing home horizontally to the eastern lot line, thereby abutting the Adjacent Property, and to convert the existing single-family home into a two-family home; and

WHEREAS, on October 22, 2008, DOB issued a determination that the proposed enlargement to the detached single-family home created a semi-detached single-family home which did not comply with ZR § 23-49(a) (Special Provisions for Side Lot Line Walls), because it did not provide the required side yard with a minimum width of 8'-0" along the western lot line; the Appellant appealed DOB's October 22, 2008 determination to the Board; and

WHEREAS, on May 12, 2009, under BSA Cal. No. 292-08-A, the Board denied the appeal, finding that: (1) ZR § 23-49 requires the provision of a minimum 8'-0" side yard for a semi-detached building; and (2) the existing non-complying 0'-9" side yard along the western lot line does not does not qualify as a pre-existing non-compliance that may remain, since the enlargement converts a formerly detached building into a semi-detached building, thereby increasing the degree of non-compliance; and

WHEREAS, subsequent to the Board's decision, the Appellant submitted revised plans to DOB and met with DOB staff on numerous occasions in an attempt to obtain approval for the proposed enlargement by purportedly demonstrating compliance with the Construction Code, the Zoning Resolution, and all other applicable rules and regulations; and

WHEREAS, the Board notes that in order to cure the side yard non-compliance which was the subject of the appeal under BSA Cal. No. 292-08-A, the Appellant proposes to demolish a portion of the existing home to provide a side yard with a minimum width of 8'-0" along the western lot line; and

WHEREAS, on January 8, 2009, as the result of civil litigation commenced in New York State Supreme Court by the Adjacent Owner against the Appellant in Gershon v. Cunningham (Index No. 26363/06), Judge Leon Ruchelsman granted a preliminary injunction ordering that all work at the site cease immediately (the "Preliminary Injunction"); and

WHEREAS, the case was subsequently assigned to a Judicial Hearing Officer ("JHO") on May 19, 2009, for a determination on issues concerning encroachment and violations of zoning regulations and the Building Code; and

WHEREAS, on August 26, 2009, the JHO determined that the Completed Construction at the site violates zoning rules and regulations, and that the Completed Construction

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encroaches onto the Adjacent Property (the “JHO Decision”); and

WHEREAS, on September 29, 2009, Judge Ruchelsman issued a Decision and Order confirming the JHO Decision in full (the “September 29, 2009 Decision”); and

WHEREAS, on June 9, 2010, Judge Ruchelsman issued another Decision and Order denying the Appellant’s motion “seeking to set aside the conclusions of JHO Lodato or to otherwise vacate that decision or the court’s acceptance of the decision,” and granting the Adjacent Owner’s motion seeking an order requiring the removal of the wall at the Appellant’s expense (the “June 9, 2010 Decision”); and

WHEREAS, on September 1, 2010, DOB received a complaint letter from the Adjacent Owner stating that the New York State Supreme Court had issued the Preliminary Injunction prohibiting the Appellant from performing work at the site, that the court had ruled that the Completed Construction at the site encroaches onto the Adjacent Property, and providing the relevant court decisions; and

WHEREAS, based on its review of the court decisions, DOB issued an objection citing AC § 28-104.8.2, and stating that “Based on the decisions and orders issued in Gershon v. Cunningham, Index No. 26363/06, the court determined that the partially completed enlargement on the zoning lot encroaches onto the adjacent property at 127 87<sup>th</sup> Street, BK;” and

WHEREAS, additionally, on October 5, 2010, DOB sent a letter to the Appellant’s representative, stating that:

The Department of Buildings (the “Department”) and the New York City Law Department have conducted a review of the decisions and orders issued by the court in *Gershon v. Cunningham*, the civil litigation commenced against your client, Robert Cunningham, by Mr. Cunningham’s neighbor, Matthew Gershon, in Supreme Court, Kings County (Index No. 26363/06). The review of the decisions and orders, specifically the August 26, 2009 decision of Judicial Hearing Officer Dominic J. Lodato, confirmed in full by Justice Leon Ruchelsman on September 29, 2009, reveals that the court determined that the partially completed enlargement on your zoning lot encroaches onto Mr. Gershon’s property. Therefore, in light of the court’s findings, the Department can not approve plans for the enlargement of your client’s existing building until either the court’s findings are overturned or the encroachment is removed; and

WHEREAS, subsequently, DOB issued the Final Determination on November 24, 2010, which forms the basis of this appeal; and

## ISSUES PRESENTED

WHEREAS, DOB contends that based on the decisions in Gershon v. Cunningham, the New York State Supreme Court has determined that the Completed Construction encroaches onto the Adjacent Property, and therefore DOB cannot approve plans under App. No.

310089123 until either: (1) the court’s ruling is overturned; (2) the encroachment is removed; or (3) the Appellant obtains consent from the Adjacent Owner in accordance with AC § 28-104.8.2, and effectuates a zoning lot merger between the subject site and the Adjacent Property since, based on the court decisions, the Completed Construction is located on the Adjacent Property, which is a separate zoning lot; and

WHEREAS, the Appellant’s primary argument is that DOB misinterpreted the court’s decisions, and that DOB’s objection to App. No. 310089123 is misplaced because the court has not ruled that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, during the course of the hearing process, the Appellant raised several supplementary arguments, addressed in more detail below, which were not part of the initial appeal filed by the Appellant and which the Board finds are outside the scope of the Final Determination and therefore not part of the subject appeal; and

## THE PROVISIONS OF THE BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the relevant sections of the Administrative Code state in pertinent part:

§ 28-104.8.2 Owner statement. The application shall contain a signed statement by the owner, cooperative owners’ corporation, or condominium owners’ association stating that the applicant is authorized to make the application and, if applicable, acknowledging that construction documents will be accepted with less than full examination by the department based on the professional certification of the applicant. Such statement shall list the owner’s full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurer; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that App. No. 310089123 should be approved because the court has not ruled that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, the Appellant argues that there is no court order specifying that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, specifically, the Appellant contends that the JHO Decision had no effect until and unless it was properly confirmed by the actual judge of record, Judge Ruchelsman; and

WHEREAS, the Appellant further contends that the September 29, 2009 Decision, in which Judge Ruchelsman stated that “[t]he decision of JHO Lodato is hereby confirmed in full” was without effect because any part of that decision which concerned the alleged encroachment was implicitly reversed by the language of the June 9, 2010 Decision, which stated that “the court does not address the encroachment issues since even if no encroachment exists, a

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factual question to be sure, the conclusion reached that the wall must be removed is not altered in any way;" and

WHEREAS the Appellant argues that the following conclusions can be drawn from the language of the June 9, 2010 Decision: (1) it is possible that no encroachment exists; (2) whether or not there is an encroachment is a factual question; and (3) the court did not make a decision as to whether or not there is an encroachment; and

WHEREAS, the Appellant further argues that by stating in the June 9, 2010 Decision that "the court does not address the encroachment issues," Judge Ruchelsman intended to clarify that his September 29, 2009 Decision was not meant to be taken as a ruling that there was an encroachment; and

## THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB represents that the only remaining objection which needs to be resolved before App. No. 310089123 can be approved is the objection concerning AC § 28-104.8.2, which is the subject of this appeal;<sup>1</sup> and

WHEREAS, DOB argues that the Appellant has misinterpreted the relevant decisions in Gershon v. Cunningham regarding the existence of an encroachment; and

WHEREAS, DOB states that the Department itself has made no finding, nor does it have the authority to make a finding, as to whether an encroachment exists; and

WHEREAS, DOB represents that, however, where it has received a complaint from an adjacent property owner that work under proposed plans encroaches onto the adjacent property without that adjoining property owner's consent and the complainant produces a court ruling that an encroachment exists, DOB cannot approve such plans without the consent of the owner of the adjacent property; and

WHEREAS, DOB argues that the JHO Decision clearly concludes that an encroachment exists, as the JHO states that "it is the decision of this court that the defendant's existing structure violates the aforementioned zoning rules and regulations. Furthermore, I find that the structure encroaches onto the plaintiff's property;" and

WHEREAS, DOB notes that the JHO decision was then "confirmed in full" in the September 29, 2009 Decision by Judge Ruchelsman; and

WHEREAS, DOB contends that the Appellant's

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<sup>1</sup> However, DOB notes that in order for App. No. 310089123 to comply with the side yard requirements of the ZR, the existing one-family home at the site must be partially demolished. The Appellant has filed Alteration Type 2 Application No. 320022747 to demolish a portion of the existing building and provide the required 8'-0" side yard per ZR § 23-461(a). Therefore, DOB states that while it may approve App. No. 310089123 once all objections are cured and the plans comply with the Construction Code, the ZR, and other applicable rules and regulations, it will not issue a permit for App. No. 310089123 until the demolition under Alteration Type 2 Job Application No. 320022747 is complete and signed-off.

reliance on the portion of the June 9, 2010 Decision which states that "the court does not address the encroachment issues," is misguided because it ignores the court's ultimate holding that "in conclusion, the defendant's motion seeking to set aside the conclusions of JHO Lodato or to otherwise vacate that decision or the court's acceptance of the decision is denied;" and

WHEREAS, DOB therefore concludes that the fact that the court denied the Appellant's motion to set aside the conclusions of the JHO Decision or to vacate the court's acceptance of that decision, reflects that the June 9, 2010 Decision adopted the determination made in the JHO Decision, as confirmed in full by the September 29, 2009 Decision, that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, accordingly, DOB states that based on the court's finding that the Completed Construction encroaches on the Adjacent Property, DOB has properly issued an objection and cannot approve plans for the enlargement of the subject home until either (1) the court's findings are overturned, (2) the encroachment is removed, or (3) the Appellant provides evidence of the Adjacent Owner's consent by agreement between the parties, in conjunction with the recordation of zoning lot merger documents since, based on the court decisions, the encroachment is located on a separate zoning lot; and

## THE ADJACENT OWNER'S POSITION

WHEREAS, the Adjacent Owner agrees with DOB that the decisions in Gershon v. Cunningham concluded that the Completed Construction built by the Appellant encroaches onto the Adjacent Property, and that the Appellant has not obtained consent and permission of the Adjacent Owner to proceed with construction, as required by AC § 28-104.8.2; and

WHEREAS, the Adjacent Owner states that a stop work order issued by DOB on or about December 20, 2007 is still in effect, as is the Preliminary Injunction against further work issued on January 8, 2009; and

WHEREAS, the Adjacent Owner argues that the Completed Construction also poses a safety threat to the Adjacent Property, as evidenced by DOB's issuance of an Emergency Declaration on March 16, 2011, authorizing the City to demolish the vertical walls of the portion of the Completed Construction abutting the Adjacent Property to a height of approximately six feet, in order to make the site safe; and

## CONCLUSION

WHEREAS, the Board supports DOB's denial of App. No. 310089123 for the following primary reasons: (1) the Board accepts DOB's interpretation of the court decisions; and (2) DOB's interpretation of the court decisions forms a sufficient basis to require that the Appellant obtain authorization from the Adjacent Owner pursuant to AC §28-104.8.2; and

WHEREAS, the Board agrees with DOB that the court decisions in Gershon v. Cunningham held that the Completed Construction encroaches onto the Adjacent Property; and

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WHEREAS, specifically, based on the relevant decisions in Gershon v. Cunningham regarding the existence of an encroachment onto the Adjacent Property, the Board finds that: (1) following its issuance of the Preliminary Injunction stopping work on the proposed enlargement, the court assigned the case to a JHO for a determination on issues concerning encroachment and violations of zoning regulations and building code; (2) the JHO Decision found, *inter alia*, that the Completed Construction encroaches onto the Adjacent Property; (3) the September 29, 2009 Decision confirmed the JHO Decision in full, including the determination that an encroachment exists; and (4) the June 9, 2010 Decision denied the Appellant's motion to set aside the JHO Decision or vacate the court's acceptance of the decision, thereby leaving intact the JHO Decision, which ruled that an encroachment exists, and the September 29, 2009 Decision, which confirmed the JHO Decision in full; and

WHEREAS, the Board finds the language in the JHO Decision concerning the existence of an encroachment onto the Adjacent Property to be clear and unambiguous, and agrees with DOB that by confirming the JHO Decision in full in the September 29, 2009 Decision, and subsequently denying the Appellant's motion to set aside the JHO Decision or vacate its acceptance of that decision, the June 9, 2010 Decision adopted the JHO's determination that an encroachment exists; and

WHEREAS, the Board finds that by interpreting the portion of the June 9, 2010 Decision which states that "the court does not address the encroachment issues" as an intention to implicitly reverse any part of the September 29, 2009 Decision which concerned the alleged encroachment, the Appellant reads an intent into the June 9, 2010 Decision which is not supported by the clear language of the court's holding; and

WHEREAS, the Board further finds that, based on the court decisions ruling that the Completed Construction encroaches onto the Adjacent Property, DOB properly issued the subject objection based on AC § 28-104.8.2; and

WHEREAS, the Board has not reviewed the proposed plans associated with App. No. 310089123 for zoning or Building Code compliance and, thus, does not take a position as to whether the proposal or any amendment to it would otherwise comply with relevant regulations; and

WHEREAS, the Board further notes that, while the Appellant may seek to have the court's decision regarding the encroachment overturned by appealing the June 9, 2010 Decision, as of the date of the Board's decision in the subject appeal, that ruling is still in effect; and

WHEREAS, accordingly, the Board agrees with DOB's interpretation that the court decisions in Gershon v. Cunningham held that the Completed Construction encroaches onto the Adjacent Property, and the Board accepts DOB's policy and reasoning for withholding approvals in the subject case in the absence of authorization from the Adjacent Owner; and

WHEREAS, as noted above, during the course of the hearing process, the Appellant raised additional arguments

which were not part of the initial appeal filed by the Appellant and which the Board finds are outside of the scope of the Final Determination and therefore not part of the subject appeal; and

WHEREAS, specifically, the Appellant made the following supplementary arguments: (1) the survey provided by the Adjacent Owner is incorrect, and the Appellant submitted a separate survey along with photographs and additional documentation in support of its contention that the Completed Construction does not encroach upon the Adjacent Property; (2) even if the Adjacent Owner's survey is accurate and the Completed Construction does encroach onto the Adjacent Property, the encroachment is *de minimis* and should not serve as the basis for a denial of the Appellant's application; (3) the Appellant has removed the portion of the Completed Construction that allegedly encroached upon the Adjacent Property; and (4) the Board should reinstate Alteration Type 2 Permit No. 301376767 (which was initially issued on September 27, 2006 to permit the enlargement of the subject home based on professionally-certified plans), due to wrongdoing by DOB; and

WHEREAS, as to the Appellant's contention that the Completed Construction does not encroach onto the Adjacent Property, the Board notes that the decisions in Gershon v. Cunningham found that an encroachment does exist on the Adjacent Property based on a review of surveys and other evidence; and

WHEREAS, the Board relies on the determination made by the court as to the existence of an encroachment, and finds that a review of the competing surveys is not properly before the Board; and

WHEREAS, the Board notes that the subject matter of this appeal does not entail a *de novo* review of whether the Completed Construction encroaches onto the Adjacent Property, or the extent of any such encroachment, rather, the appeal concerns a challenge to DOB's objection under AC § 28-104.8.2 based on its interpretation that the court decisions in Gershon v. Cunningham found that the Completed Construction encroaches onto the Adjacent Property; thus, the Board has not considered the surveys or other evidence submitted by the Appellant or the Adjacent Owner regarding the actual location of the Completed Construction, or whether any encroachment onto the Adjacent Property is *de minimis* in nature; and

WHEREAS, as to the Appellant's argument that any encroachment onto the Adjacent Property has been removed, the Board notes that in the absence of a statement from DOB acknowledging that the encroachment has been removed and the objection under AC § 28-104.8.2 has been cured, the issue that forms the basis for the subject appeal remains before the Board; and

WHEREAS, as to the Appellant's request that the Board reinstate Permit No. 301376767, the Board notes that the Appellant made the same request approximately two years ago in the prior appeal under BSA Cal. No. 292-08-A, and the Board rejected the Appellant's request at that time because the final determination in that case did not concern

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Permit No. 301376767 and the Appellant had not provided a timely-issued final determination regarding that permit; and

WHEREAS, DOB records indicate that Permit No. 301376767 was revoked on or about January 18, 2008; and

WHEREAS, the Board notes that nothing has transpired in the two years since the appeal under BSA Cal. No. 292-08-A to change the Board's position regarding the Appellant's request for the reinstatement of Permit No. 301376767, as the subject Final Determination similarly does not concern Permit No. 301376767, and the Appellant's request remains untimely and cannot be acted on by the Board.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated November 24, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 17-05-A

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

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

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

### COMMUNITY BOARD #8BX

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

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## 195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27<sup>th</sup> Street, between 38<sup>th</sup> and 39<sup>th</sup> Avenue, Block 387, Lot 31, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, MAY 3, 2011 1:30 P.M.

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

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## ZONING CALENDAR

### 187-07-BZ

APPLICANT – Dennis D. Dell'Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit accessory parking for an existing eating and drinking establishment, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue. Block 5408, Lot 43, Borough of Staten Island.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Marc Dell'Angelo.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 8, 2011, acting on Department of Buildings Application No. 500516710, reads in pertinent part:

“ZR 22-00. Proposed enlargement of existing non-conforming use (eating and drinking place, Use Group 6) in R3X zoning district contrary to Zoning Resolution, BSA approval is required...

ZR 107-483(b). Proposed perimeter landscaped area screening parking lot along adjoining street is less than 7 feet in width contrary to Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in an R3X zoning district within the Special South Richmond Development District, an increase in the size of the zoning lot for an existing eating and drinking establishment (Use Group 6), which does not conform to district use regulations, and planting areas that do not comply with minimum width requirements, contrary to ZR §§ 22-00 and 107-483(b); and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with continued hearings on March 1, 2011 and March 29, 2011, and then to decision on May 3, 2011; and

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

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, an adjacent neighbor provided testimony objecting to the location and maintenance of the refuse bins and grease container at the site and the pickup schedule for garbage collection from the site; and

WHEREAS, the subject site is located on the north side of Hylan Boulevard, between Harold Avenue and Arden Avenue, in an R3X zoning district within the Special South Richmond Development District; and

WHEREAS, Lot 43 currently has approximately 225 feet of frontage on Hylan Boulevard, an average depth of approximately 51 feet, and a total lot area of 11,498 sq. ft.; and

WHEREAS, Lot 44 has 25 feet of frontage on Hylan Boulevard, a depth of approximately 50 feet, and a lot area of 1,235 sq. ft.; and

WHEREAS, the applicant seeks to merge Lots 43 and 44 into a single zoning lot (Tentative Lot 43), which would have 250 feet of frontage on Hylan Boulevard, an average depth of 51 feet, and a total lot area of 12,732 sq. ft.; and

WHEREAS, the site is currently occupied by an eating and drinking establishment (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the Lot 43 portion of the site since 1973 when, under BSA Cal. No. 130-73-BZ, the Board granted a variance to permit the enlargement of a pre-existing non-conforming eating and drinking establishment, which increased the degree of non-conformity; and

WHEREAS, on April 29, 1997, under BSA Cal. No. 63-96-BZ, the Board granted a variance to permit the further enlargement and structural alteration of the eating and drinking establishment; a condition of the grant limited the term to ten years, which expired on April 29, 2007; and

WHEREAS, the applicant states that, since the time of the most recent grant, the owner has acquired the adjacent lot to the west (Lot 44), and now seeks to merge the newly acquired lot with the subject zoning lot; and

WHEREAS, the applicant originally proposed to enlarge the existing zoning lot as well as to enlarge the existing eating and drinking establishment building by 581 sq. ft., but later revised its proposal to eliminate the requested enlargement of the eating and drinking establishment building; and

WHEREAS, accordingly, the applicant proposes to increase the size of the zoning lot by incorporating Lot 44 into the site; the additional lot area will be used to reconfigure and enlarge the existing parking lot; and

WHEREAS, the applicant also proposes to provide planting strips varying in width from 2'-6" to 4'-0" in front of the parking areas along Hylan Boulevard, which is contrary to the requirement that parking areas be screened from all adjoining streets by a landscaped area at least 7'-0" in width; and

WHEREAS, because an increase in the degree of the existing non-conforming commercial use is not permitted in the

R3X zoning district, and because relief from the minimum width of the planting areas is required, the applicant seeks a variance for the site; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of development of the site; and (2) the shallow depth of the site; and

WHEREAS, the applicant notes that the eating and drinking establishment on the site was a pre-existing non-conforming use that has been the subject of two prior variance applications before the Board to allow the enlargement of the non-conforming use on the site; and

WHEREAS, the prior variances granted by the Board found that the unique conditions on the site, including the history of development as a legal non-conforming use, the non-complying building constructed with no basement and inadequate storage space, the irregular shape of the zoning lot with a long frontage on Hylan Boulevard, a heavily-trafficked commercial thoroughfare, and a narrow irregular depth created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that the same conditions that formed the basis of the prior grants are equally applicable to the subject application, as the applicant merely seeks to enlarge the zoning lot by incorporating the 25-ft. by 50-ft. parcel immediately to the west of the zoning lot; and

WHEREAS, the applicant notes that the increased lot area will only be used to reconfigure the parking lot and improve circulation for the site; no increase in the size or operation of the eating and drinking establishment is proposed; and

WHEREAS, as to the shallow depth of the site, the applicant states that Lot 44 has a depth of only 50 feet, which precludes the construction of a conforming single-family home on the site; and

WHEREAS, specifically, the applicant states that due to the shallow depth and overall substandard size of Lot 44, a conforming use is not viable, as a single-family home on that lot would have exterior dimensions of approximately 15 feet by 19 feet, a maximum of 738 sq. ft. of floor area, and small floor plates constrained by interior stairwells and circulation space; and

WHEREAS, in support of its claim that the resulting 738 sq. ft. home on Lot 44 would not be viable, the applicant submitted data for the 17 existing homes on the subject block, which reflects that the average floor area for the homes is 2,008 sq. ft., and all but one of the homes has a floor area greater than 1,460 sq. ft.; and

WHEREAS, the applicant represents that the shallow depth of the site also results in the inability to provide planting strips in front of the parking areas along Hylan Boulevard with widths greater than 2'-6" to 4'-0"; and

WHEREAS, the applicant states that providing a complying landscaped area with a width of 7'-0" in front of the parking areas along Hylan Boulevard would compromise the parking arrangement and safety on the site; and

WHEREAS, the Board finds that the aforementioned

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unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board notes that feasibility studies reflecting that conforming development of the site would not provide a reasonable return were submitted in support of the previous grants under BSA Cal. Nos. 130-73-BZ and 63-96-BZ; and

WHEREAS, the Board relies on the prior (b) findings for the significant portion of the proposed zoning lot that was the subject of the previous grants; and

WHEREAS, because Lot 44 can only support a single-family home, the Board finds that a separate feasibility study solely for the addition of Lot 44 into the zoning lot is unnecessary; and

WHEREAS, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home on Lot 44; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and\

WHEREAS, the applicant represents that the proposed enlargement of the existing parking area will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of commercial and residential uses; and

WHEREAS, the applicant states that the use of Lot 44 will merely be as an extension of the existing parking lot located on the site, and that planting areas and trees will be added to the existing landscaping provided around the perimeter of the parking lot to provide a buffer for the surrounding residential uses; and

WHEREAS, at hearing, the Board directed the applicant to address the adjacent neighbor's concerns regarding garbage collection and the location of refuse bins and grease containers at the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the refuse bins and grease containers have been relocated away from the adjacent residential neighbor, and submitted a letter from a carting company stating that trash pickup will occur before 10:30 p.m.; 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 the result of the site's unique physical conditions; and

WHEREAS, as noted above, the applicant originally proposed to both enlarge the zoning lot by incorporating Lot 44 into the site and to enlarge the existing eating and drinking establishment on the site by 581 sq. ft., but subsequently eliminated its request to enlarge the eating and drinking establishment building, thereby limiting the proposal to an enlargement of the zoning lot; and

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

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

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617.12 and 617.4; 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 Type II determination 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 ZR § 72-21 and grants a variance to permit, on a site located in an R3X zoning district within the Special South Richmond Development District, an increase in the size of the zoning lot for an existing eating and drinking establishment (Use Group 6), which does not conform to district use regulations, and planting areas that do not comply with minimum width requirements, contrary to ZR §§ 22-00 and 107-483(b); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 14, 2011"- Two (2) sheets and "Received March 14, 2011"- Two (2) sheets and *on further condition*:

THAT the term of this grant shall expire on May 3, 2021;

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

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

THAT the location of the refuse bins and grease container shall be as indicated on the BSA-approved plans;

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

THAT 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, May 3, 2011.

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## 309-09-BZ

### CEQR #10-BSA-031K

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

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

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

### COMMUNITY BOARD #11BK

#### APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 27, 2011, which supersedes an earlier decision related to another iteration of the plans, acting on Department of Buildings Application No. 302330029, reads in pertinent part:

The proposed erection of a residential building in Use Group 2 in an R5, R6A and C2-3 zoning district:

1. Creates non-compliance with respect to the required side yard along the residential side lot line and is contrary to Section 23-51 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit on a site partially within an R5 zoning district and partially within a C2-3 (R6A) zoning district, the proposed construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with continued hearings on November 16, 2010, January 11, 2011 and March 15, 2011, and then to decision on May 3, 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 11, Brooklyn, recommends approval of an earlier iteration of the proposal that included commercial use, on the condition that the building not be occupied by a dry cleaning use; and

WHEREAS, an adjacent neighbor, individually and as represented by counsel, provided oral and written testimony in opposition to the proposal, citing concerns about: (1) damage caused to the adjacent property due to construction on the subject site; (2) whether the site conditions are unique and/or were created by the property owner; (3) the conclusions of the financial analysis; (4) the impact of the side yard waiver on the

character of the neighborhood; and (5) whether there had been sufficient opportunity to review the case file and provide additional submissions; and

WHEREAS, the site is located on the north side of 65<sup>th</sup> Street, between Bay Parkway and 21<sup>st</sup> Avenue; and

WHEREAS, the site has a width of 24 feet, a depth of 100 feet, and a total lot area of approximately 2,400 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story (three levels and a basement) eight-unit multiple dwelling at the site; and

WHEREAS, the proposed building will have the following complying parameters: 6,240 sq. ft. of floor area (2.6 FAR); a lot coverage of 65 percent; a rear yard with a depth of 35'-0"; and a wall height and total height of 34'-8"; and

WHEREAS, however, the applicant proposes to not provide any side yards (one side yard, with a minimum width of 8'-0" is required along the western lot line); and

WHEREAS, the applicant initially proposed to construct a five-story (including cellar) mixed-use residential/commercial building with 7,210 sq. ft. of floor area (3.0 FAR), 69 percent lot coverage (65 percent is the maximum permitted lot coverage), and a height of 50 feet (35 feet is the maximum permitted height); and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect the elimination of the commercial use, a reduction in the FAR, a reduction to the building height, and an increase in the depth of the rear yard, which eliminated the need for waivers to lot coverage and building height; and

WHEREAS, the applicant states that side yard relief is necessary, for reasons stated below; thus, the instant application was filed; 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 compliance with underlying district regulations: the narrowness of the subject site and the presence of a zoning district boundary line between an R5 district at the western portion of the site and a C2-3 (R6A) at the eastern portion of the site; and

WHEREAS, as to the narrow width of the site, the applicant states that if the required side yard with a width of eight feet were provided, the building would have an exterior width of only 16'-0" which would result in an interior width of approximately 14'-0" and floor plates that narrow to accommodate interior circulation space; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a building of a reasonable width; and

WHEREAS, as to the zoning district boundary line, the 2,400 sq. ft. of lot area is predominantly located within the C2-3 (R6-A) zoning district (1,500 sq. ft. of lot area) at the east side of the site and the remaining lot area (900 sq. ft.) is within the R5 district;

WHEREAS, the Board notes that under ZR § 77-11, the C2-3 (R6A) zoning district regulations can apply to the entire site since more than 50 percent of the site is located within the C2-3 (R6A) zoning district and no portion of the site is greater

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than 25 feet from the zoning district boundary line; and

WHEREAS, accordingly, all of the C2-3 (R6A) bulk provisions can be applied to the site; and

WHEREAS, however, because the adjacent site to the west is located within an R5 zoning district and the subject site is located within an underlying R6A zoning district, ZR § 23-51 (Special Provisions for Yards Adjacent to R1 through R5 Districts) requires that there be a side yard with a minimum width of eight feet along the western lot line; and

WHEREAS, additionally, the building height must be limited to 35 feet pursuant to ZR § 23-693 (Special Provisions Applying Adjacent to R1 through R6B Districts) since it is adjacent to a site within an R5 zoning district, even though the C2-3 (R6A) zoning district regulations would allow for a greater height; and

WHEREAS, the Board notes that the building envelope that would accommodate the floor area available and building form (a multiple dwelling) under C2-3 (R6A) zoning regulations is narrow and with a reduced height (per the ZR §§ 23-51 and 23-693 restrictions) which results in a building that cannot accommodate the available 3.0 FAR; and

WHEREAS, the as-of-right building envelope with an exterior width of 16 feet and a height of 35 feet could only accommodate three stories and a total floor area of 3,840 sq. ft. (1.6 FAR), including commercial use at the first floor and two apartments above; and

WHEREAS, further, the height limit at ZR § 23-693, with the required side yard, limits the total floor area of the site to approximately half (1.6 FAR) of what would be permitted (3.0 FAR) if the site were not within 25 feet of the zoning district boundary line; and

WHEREAS, the applicant asserts that a building with a width of 16 feet is too narrow to feasibly accommodate a multiple dwelling, which is permitted as of right pursuant to R6A zoning regulations and, if not for the district boundary line, the width of the building could be 24 feet without any side yards; and

WHEREAS, in support of its assertion that a home with a width of 16 feet is not feasible, the applicant's survey reflects that 14 lots in the surrounding area (on 64<sup>th</sup> Street, 65<sup>th</sup> Street, and Bay Parkway) have widths of 24 to 25 feet, and buildings on all such sites were a minimum of 20 feet in width; another site has a width of 75 feet and is occupied by a building with a width of 75 feet; and

WHEREAS, as to uniqueness, the applicant notes that the lot width of 24 feet alone is not unique, but a vacant site, with a width of 24 feet, divided by a zoning district boundary line is unique within the surrounding area; and

WHEREAS, in support of the claim that the combination of site conditions is unique, the applicant surveyed the 17 other sites along the zoning district boundary (from 62<sup>nd</sup> Street to 68<sup>th</sup> Street) that would be similarly affected by such regulations; and

WHEREAS, the survey reflects that seven of the 17 sites are of similar size and width, but that the subject site is the only vacant site; and

WHEREAS, the survey also reflects that of the 17 sites, 14 are developed with homes and three, including the subject

site, are vacant sites, but that the other two vacant sites are large enough to accommodate a side yard; and

WHEREAS, the survey reflects that the subject site is the only site that is vacant, as narrow, and affected by the zoning district boundary line; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant provided a financial analysis for (1) a three-story mixed-use commercial/residential building with ground floor commercial, two residential units, and 1.6 FAR; (2) a three-story residential building with three units and 1.6 FAR; (3) a five-story mixed-use commercial/residential building at 3.0 FAR, a height of 50 feet, and with 69 percent lot coverage; (4) several lesser variance scenarios including a three-story building (including cellar) and a scenario with a side yard with a width of 4'-0"; and (5) the current proposal for an eight-unit residential building with a height of 34'-8" and 65 percent lot coverage; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by a mix of uses including single-family homes, multiple dwellings, community facilities, and commercial uses and that there are larger buildings, including several five-story multiple dwellings, at the corners and within the C2-3 (R6A) and other adjacent higher density zoning districts; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that it complies with all relevant bulk regulations other than side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R6A zoning district regulations for FAR, open space, and lot coverage and complies with the R5 regulations for height and rear yard; and

WHEREAS, the applicant's analysis reflects that there is not any context for side yards with widths of 8'-0" in the surrounding area as many sites are occupied with semi-detached homes with side yards with widths of 4'-0"; and

WHEREAS, the Board notes that the building that formerly occupied the site was attached to the adjacent building to the west and did not provide any side yard along the portion

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of the common lot line it occupied; and

WHEREAS, the Board notes that sites located within the R6A zoning district but at a distance greater than 25 feet from the zoning district boundary line would not have to provide the side yard with a width of 8'-0" and could construct to a height significantly greater than the 34'-8" proposed; and

WHEREAS, the Board notes that the adjacent building to the east, within the C2-3 (R6A) zoning district is a multiple dwelling, which does not provide a side yard and rises to a height of seven stories and 74 feet and, thus provides a transition between the large building to the east and the single-family home to the west; and

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

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width and presence of the zoning district boundary line; and

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

WHEREAS, as noted above, the applicant initially proposed a building with 7,210 sq. ft. of floor area (3.0 FAR), 69 percent lot coverage (65 percent is the maximum permitted lot coverage), and a height of 50 feet (35 feet is the maximum permitted height); and

WHEREAS, during the course of the hearing process, the applicant revised the plans at the Board's direction to reduce the FAR, lot coverage, and height, which ultimately eliminated the non-complying height and lot coverage; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards is the minimum necessary to afford the owner relief; and

WHEREAS, as to the opposition's assertion that the applicant has not provided complete responses to the Board's questions, the Board notes that it is satisfied with the applicant's submissions and has concluded that the record reflects sufficient documentation for it to act on the variance application; and

WHEREAS, the Board also notes that the application was filed in November 2009 and that there have been three public hearings on the matter, with the first in November 2010; accordingly, the Board concludes that all interested parties have had sufficient opportunity to review the case file and provide written or oral testimony on the matter and, thus, the Board is not premature in moving to decision; and

WHEREAS, the Board has reviewed and considered the opposition's written and oral testimony; and

WHEREAS, the Board notes that (1) any concerns about damage to the adjacent home should be raised in an appropriate forum and are not properly before the Board; (2) the applicant submitted evidence that reflects that the site conditions meet the uniqueness finding under ZR § 72-21(a) and that the financial analysis reflects a nexus between the hardship at the site and the potential return on investment; and (3) as noted above, the Board finds that the side yard waiver is the

minimum relief necessary and that it will not disrupt the neighborhood character; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; 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. 10BSA031K, dated November 18, 2009; and

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

WHEREAS, 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 ZR § 72-21 and grants a variance to permit on a site partially within an R5 zoning district and partially within a C2-3 (R6A) zoning district, the proposed construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51; *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 February 29, 2011"— twelve (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 6,240 sq. ft. of floor area (2.6 FAR); a lot coverage of 65 percent; a rear yard with a minimum depth of 35'-0"; and a wall height and total height of 34'-8"; as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

THAT there shall be no habitable room in the cellar;

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

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

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

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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, May 3, 2011.

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## 127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 10, 2010, acting on Department of Buildings Application No. 320148416, reads in pertinent part:

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

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

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage.

Proposed plans are contrary to ZR 23-631 in that the proposed perimeter wall height exceeds the maximum permitted perimeter wall height.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard; and

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

WHEREAS, a public hearing was held on this

application on January 11, 2011, after due notice by publication in *The City Record*, with continued hearings on February 8, 2011, March 8, 2011 and March 29, 2011, and then to decision on May 3, 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 15, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,921 sq. ft. (0.49 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,921 sq. ft. (0.49 FAR) to 5,943 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 38 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of approximately 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to provide a perimeter wall height of approximately 21'-6 1/4" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-1 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

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

WHEREAS, the Board notes that the adjacent single family home at 53 Coleridge Street has a perimeter wall height of 21'-6 1/4"; and

WHEREAS, at hearing, the Board directed the applicant to establish the adjacent home's perimeter wall height and to revise its plans so as not to exceed its height; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home, as revised, therefore falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that applicant may match the pre-existing perimeter wall of

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the adjacent home, which exceeds a height of 21'-0"; and  
WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03 to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, rear yard and perimeter wall height contrary to ZR §§ 23-141, 23-47 and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 21, 2011"- (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,943 sq. ft. (0.9 FAR); a minimum open space of 61 percent; a maximum lot coverage of 38 percent; a rear yard with a minimum depth of approximately 22'-0"; and a maximum perimeter wall height of approximately 21'-6 1/4", 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, May 3, 2011.

## 134-10-BZ

### CEQR #11-BSA-009K

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Neil Weisbard.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 26, 2010, acting on Department of Buildings Application No. 310153473, reads in pertinent part:

“Proposed (2) family dwelling (UG 2) in an M1-1 zoning district is contrary to Section 42-10 of the NYC ZR and must be referred to the BSA

Proposed FA is contrary to Section 43-12 of the NYC ZR and must be referred to the BSA

Proposed FAR is contrary to Section 43-12 of the NYC ZR and must be referred to the BSA

Proposed Front Wall Height is contrary to Section 43-43 of the NYC ZR and must be referred to the BSA

Proposed Initial Setback Distance is contrary to Section 43-43 of the NYC ZR and must be referred to the BSA

Proposed Sky Exposure Plane is contrary to Section 43-43 of the ZR and must be referred to the BSA;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a four-story residential building with two dwelling units and one on-site parking space, contrary to ZR §§ 42-10, 43-12 and 43-43; and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in the *City Record*, with continued hearings on December 7, 2010, January 11, 2011 and February 8, 2011, and then to decision on May 3, 2011; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application, subject to the following conditions: (1) the width of the curb cut be reduced to 12 feet; (2) the applicant consider modifying the design of

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the building façade to make it more harmonious with the surrounding neighborhood; and (3) the applicant reconsider the use of window louvers for the building; and

WHEREAS, the site is located on the north side of Union Street, between Van Brunt Street and Columbia Street, within an M1-1 zoning district; and

WHEREAS, the site has a width of 23 feet, a depth of 100 feet, and a lot area of 2,300 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story two-family residential building with a floor area of 4,574 sq. ft. (the maximum permitted floor area is 2,286 sq. ft.), an FAR of 2.0 (the maximum permitted FAR is 1.0), a total height of 45'-6", a front wall height of 37'-0" (the maximum permitted front wall height is 30'-0"), an initial front setback of 15'-0" (a minimum initial front setback distance of 20'-0" is required), encroachment into the sky exposure plane, and one on-site parking space; and

WHEREAS, the applicant initially proposed to construct a four-story residential building with a total height of 52'-4" and two parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant reduced the total height of the building by approximately seven feet, and eliminated one of the on-site parking spaces; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, and because relief from bulk requirements of the M1-1 district is necessary, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following is a unique physical condition which creates unnecessary hardship in developing the site in conformance with applicable regulations: the site is a vacant lot with a narrow width and no opportunity for assemblage with adjoining lots; and

WHEREAS, the applicant represents that the subject zoning lot is a vacant pre-existing lot with a width of 23'-0", which cannot feasibly accommodate a modern conforming use; and

WHEREAS, the applicant states that the narrow lot width would result in inefficient, narrow floor plates that would severely limit potential manufacturing or commercial uses on the site; and

WHEREAS, the applicant states that there are only two other lots in the surrounding area with widths of less than 25 feet which are occupied by buildings containing a conforming use; and

WHEREAS, the applicant represents that there are so few conforming uses on narrow lots because the limited width of such lots does not provide sufficient space for a loading dock or floor plates which are necessary for manufacturing or commercial uses; and

WHEREAS, as further evidence that the subject lot is not conducive to development of a conforming manufacturing or commercial building, the applicant submitted letters from real estate brokers reflecting that the owner has attempted to market the site for a conforming use since November 2008 but has received no offers; and

WHEREAS, the applicant represents that the subject site

is also unique because it is the only vacant lot in the surrounding area with no opportunity for assemblage with adjoining zoning lots; and

WHEREAS, the applicant states that all of the lots immediately adjacent to the subject site are improved with existing buildings and under separate ownership; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that of the 13 vacant lots less than 25 feet in width in the surrounding area, the subject site is the only vacant lot which does not adjoin another vacant lot, and therefore has no opportunity to merge with an adjoining lot to create a larger zoning lot that is more viable for conforming uses; and

WHEREAS, the Board finds that the narrow width of the vacant lot is a unique physical condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right industrial building; (2) an as-of-right commercial office building; (3) a four-story, two-family residential building with a 2.0 FAR, a rear yard with a depth of 43 feet, and no parking spaces; (4) a three-story, two-family residential building with a 1.99 FAR, a rear yard with a depth of 30 feet, and no parking spaces; (5) a three-story, two-family residential building with a 1.99 FAR, a rear yard with a depth of 30 feet, and one parking space in a garage; and (6) the proposed four-story residential building with a 2.0 FAR, a rear yard with a depth of 43 feet, and one parking space in a garage; and

WHEREAS, the study concluded that only the proposed residential building would realize a reasonable return; and

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

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

WHEREAS, the applicant states that the immediate area is a mix of residential, commercial, and manufacturing/industrial uses; and

WHEREAS, the applicant notes that the area immediately to the east of the site is located in a C2-4 (R6A) zoning district, and the areas one block to the south and southeast of the site are located in R6B zoning districts; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the adjacent buildings to the east, south and north of the site all contain residential uses; and

WHEREAS, the applicant states that the proposed building complies with all bulk regulations of the adjacent R6A and R6B zoning districts, except for lot coverage; and

WHEREAS, the applicant further states that the total height of the building was reduced by approximately seven

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feet, and the proposed building is contextual with the surrounding area; and

WHEREAS, specifically, the applicant submitted a site line drawing which reflects that (1) since it is setback, only a small portion of the fourth floor of the proposed building will be visible from the street, (2) the base wall of the proposed building will align with the street wall of the adjacent building to the east, and (3) the street wall of the proposed building will be lower than the majority of the base walls of the buildings on the south side of Union Street, and the small portion of the fourth floor parapet which is visible from the street will appear lower than the majority of the base walls of the buildings on the south side of Union Street; and

WHEREAS, in response to the Community Board's request, the applicant agreed to reduce the width of the existing curb cut on the site from 22 feet to 12 feet; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes residential buildings adjacent to the site, across the street, and elsewhere on the subject block; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's historic lot dimensions; and

WHEREAS, as noted above, during the course of the hearing process, the applicant revised the plans to reduce the total height from 52'-4" to 45'-6" and eliminated one of the garage parking spaces from its proposal, in response to concerns raised by the Board; and

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

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

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617; 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. 11-BSA-009K dated May 2, 2011; and

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

WHEREAS, the New York City Department of

Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP accepts the March 2011 Remedial Action Plan and the Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted for its review and approval upon completion of the proposed project; and

WHEREAS, a site survey and permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, one active industrial facility (auto body shop) was identified; and

WHEREAS, based on the air quality screening analysis conducted for the auto body shop, DEP determined that significant impacts from industrial/manufacturing uses on the proposed project are not anticipated; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, a four-story residential building with two dwelling units and one on-site parking space, contrary to ZR §§ 42-10, 43-12 and 43-43; *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 December 21, 2010" – six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a floor area of 4,574 sq. ft. (2.0 FAR); a total height of 45'-6"; a maximum front wall height of 37'-0"; and one parking space, as indicated on the BSA-approved plans;

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

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

THAT substantial construction shall be completed in accordance with ZR § 72-23;

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

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

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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, May 3, 2011.

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## 156-10-BZ thru 164-10-BZ

### CEQR #10-DCP-029K

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1204, 1208, 1214, 1220, 1226, 1232, 1264, 1270, 1276 37<sup>th</sup> Street, South side of 37<sup>th</sup> Street between 12<sup>th</sup> Avenue and 14<sup>th</sup> Avenue, Block 5295, Lots 4, 104, 105, 106, 107, 108, 111, 112, 113, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated December 1, 2010 and January 10, 2011, acting on Department of Buildings Application Nos. 320190324, 320190333, 320190342, 320190351, 320190360, 320190379, 320190388, 320190404, and 320190413, read, in pertinent part:

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required rear yard (23-47 ZR).

[and/or]

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required distance between a legally required window and a lot line (23-861 ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of nine four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and five of the nine buildings also do not provide the required rear yard, contrary to ZR § 23-47; and

WHEREAS, a companion variance application, filed under BSA Cal. Nos. 165 through 172-10-BZ, for Block 5300, Lots 9, 109-113, and 115-116 was heard concurrently and

decided on the same date; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, this application is brought on behalf the City of New York and will be developed under the auspices of the New York City Department of Housing Preservation and Development (HPD) (the “applicant”), which will restrict the use to affordable housing under HPD’s New Foundations Program; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

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

WHEREAS, the site is located on the south side of 37<sup>th</sup> Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, and the applicant proposed to subdivide the existing lot into eight individual zoning lots; six will be developed with a total of nine four-family buildings (nine tax lots) and two lots will be developed with off-street parking facilities accessory to existing community facilities located behind the site on 38<sup>th</sup> Street and not included in the proposed residential request; and

WHEREAS, the site has a width of 700 ft., a depth of 50 ft., and a lot area of 35,000 sq. ft., and is currently within an (MX) M1-2/R6A zoning district (the site was rezoned as part of the Culver El rezoning on October 27, 2010 from an M2-1 zoning district); and

WHEREAS, the site is located within a former railroad right-of-way known as the Culver El, which was formerly occupied by an elevated railroad line, which was demolished in 1985, and a ground level railroad; and

WHEREAS, the applicant states that because the site is located within a former railroad right-of-way, it was required to seek a special approval from the City Planning Commission pursuant to ZR § 74-681, which it has done; and

WHEREAS, additionally, the applicant states that HPD obtained a designation of an Urban Development Action Area Project (UDAAP) and Disposition of city-owned property to permit the disposition of the site and to permit development of the proposed affordable housing; and

WHEREAS, the applicant proposes to construct a total of 17 four-story four-family buildings and a total of 68 affordable housing units across the subject block and the companion Block 5300;

WHEREAS, of the nine subject buildings, each of the three single buildings will have 6,543 sq. ft. of floor area and each of the three double buildings will have 13,040 sq. ft.; all non-corner buildings propose a rear yard with a depth of 10 feet and one side yard with a width of 9’-6””; all buildings include off-street parking for 50 percent of the proposed residential units; and

WHEREAS, the buildings will have a complying wall height of 40’-0””, and a total height of 47’-9””, at the peak of the roof; and

WHEREAS, the applicant proposes to provide a rear

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yard/minimum distance to the rear lot line and open areas of between 9'-6" and 15'-8" in between the buildings and rear yards with depths/distance from required windows to lot line of 10'-0" (rear yards and distance from required window to lot line with a minimum depth of 30'-0" are required); and

WHEREAS, the applicant notes that although the buildings do not provide the minimum distance requirement, the open areas exceed the side yards required pursuant to ZR § 23-561; 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 compliance with underlying district regulations: (1) the history of the site as a railroad right-of-way; (2) the shallow depth; and (3) the programmatic needs of HPD's housing initiative; and

WHEREAS, as to the history of the site, the applicant states that the site was occupied by the elevated railroad line (BMT Culver Shuttle transit line) and the ground level South Brooklyn Railroad, both of which stopped service in the 1970's; the elevated train infrastructure occupied the site until its demolition in 1985; and

WHEREAS, the applicant states that after the Metropolitan Transit Authority surrendered its interest in the site, the City has leased and/or sold portions of the site for uses including affordable residential development and accessory parking for surrounding institutions and businesses; and

WHEREAS, the applicant states that in recent years, the City announced an initiative to stimulate development of the site with affordable housing, which is in great demand in the surrounding Borough Park neighborhood; and

WHEREAS, the applicant notes that the rezoning of the subject site and portions of the surrounding area and other associated actions are a culmination of several years of effort from the Department of City Planning, HPD, elected officials and local organizations to make a productive use of the abandoned railroad right-of way; and

WHEREAS, as to the site's depth, the applicant notes that the site's unusual length and depth of 50 feet may have been sufficient for the railroad which did not require a standard block depth for its infrastructure, but that nearly all sites in the area have depths ranging from 80 feet to 150 feet, with the majority having depths of 80 to 100 feet; and

WHEREAS, the applicant proposes to provide a rear yard and a distance from wall to lot line with a depth of 10 feet along the rear lot line in order to provide a building depth of 40 feet and open areas with widths of between 9'-6" and 15'-8" between the buildings and side lot lines; and

WHEREAS, the applicant notes that, although the buildings do not meet the minimum distance between required window and lot line requirement of 30 feet, the proposed open area exceeds the side yards (0 ft. or a minimum of 8 ft., if provided) required pursuant to ZR § 23-651; and

WHEREAS, the applicant submitted as-of-right plans which reflect that in order to construct complying buildings which satisfy HPD's programmatic need of accommodating the maximum available floor area, the buildings would be six stories in height with depths of only 20 feet, which would result in inefficient floorplates and buildings that would not

satisfy HPD's needs and also not be able to accommodate off-street parking; and

WHEREAS, further, the applicant notes that the as-of-right buildings with interior space required for required exits, elevators, and circulation space would render the buildings extraordinarily expensive and impractical to construct; and

WHEREAS, the applicant also notes that ZR § 23-52 (Special Provisions for Shallow Interior Lots) provides that on a lot that is 50 ft. in depth, a rear yard of ten feet is permitted; and

WHEREAS, however, the applicant notes that as a result of the subject site being subdivided into multiple zoning lots (as required by HPD's programmatic needs), after December 15, 1961, the site does not meet the condition precedent required for the rear yard reduction; and

WHEREAS, the applicant notes that the post-1961 creation of the individual zoning lots is not the cause for the shallow lot condition, which is associated with the unique history and usage of the subject site as a railroad right-of-way that has been abandoned; and

WHEREAS, the applicant asserts that maintaining the site as a single zoning lot would result in the requirement to comply with ZR § 23-711 for providing a minimum distance of between 30 and 50 feet between buildings which would drastically limit the amount of development on the site; and

WHEREAS, additionally, the applicant notes that the minimum distance between required window and lot line regulations would not apply if the proposed buildings were limited to a maximum of three stories – three units and 32 ft. in height; and

WHEREAS, the applicant asserts that such a height limit would result in a loss of 25 percent of the development and not allow HPD to satisfy its programmatic need and it would still be contrary to the rear yard requirement of 30 feet; and

WHEREAS, the applicant represents that the as-of-right plan would also require that the lowest floor would be a basement, not at grade, and that it would require installation of an ADA-accessible entry ramp at the basement floor level, requiring that the first floor be set back; and

WHEREAS, the applicant notes that the proposed design reflects one unit per floor (which is well within the density limitations) and, thus, each unit will include frontage on 37<sup>th</sup> Street, which has a width of 60 feet, and there will not be any units that only have exposure to the rear yard; and

WHEREAS, as to the uniqueness of the site conditions, the applicant notes that the railroad right-of-way has affected only a narrow strip along five city blocks in the area and that the two sites seeking variances are the last that have not been the subject of other discretionary actions to allow for their development; and

WHEREAS, as to HPD's programmatic need, the applicant states that the Department of City Planning and HPD have executed a series of land use actions to facilitate the development of the subject site with a series of homes under HPD's affordable housing initiatives and that the proposal was subject to extensive review by HPD's Division of Architecture, Construction, and Engineering to insure compliance with HPD's standards as to habitability and site plan design; and

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WHEREAS, accordingly, the applicant represents that the proposed site plan meets HPD's standards for buildings of sufficient size and density that are feasible to construct; and

WHEREAS, the applicant represents that the proposed design complies with HPD's programmatic and quality of life requirements; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of HPD's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the site is currently owned by the City and proposed for development with affordable housing by a non-profit entity to be selected by HPD in furtherance of its mission; 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 states that the uses adjacent to the proposed rear yards are a mix of manufacturing, community facility, and residential uses as well as vacant sites; and

WHEREAS, the applicant asserts that the only residential uses abutting the portions of the site associated with the waivers, are located adjacent to proposed corner lots for which no rear yard waivers are sought; and

WHEREAS, the applicant notes that the distance between these existing residential/mixed use buildings and the proposed dwelling units is ten feet which is greater than the required side yards; and

WHEREAS, the applicant states that the proposed development has been reviewed by the Department of City Planning, which was the applicant for the rezoning, text change, and special permits, as well as by HPD, which is the applicant for the UDAAP and will select the non-profit developer for the project, pursuant to which the buildings will be constructed; and

WHEREAS, the applicant cites to the City's Uniform Land Use Review Procedure (ULURP) application, which says that "the project area consists of underutilized property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, insanitary and blighting conditions. The project activities would protect and promote health and safety and would encourage sound growth and development;" and

WHEREAS, the applicant also cites to the Department of City Planning's special permit application for the construction within the railroad right-of-way in which it states that (1) the streets providing access to the site are adequate to handle traffic generated from the proposed use of the site; (2) the bulk and density do not affect the character of the surrounding area; and (3) the proposed and existing uses do not adversely affect each other; 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 site conditions including the site's former use as a railroad right-of-way; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except required rear yards and minimum distance between required windows and lot lines is the minimum necessary to afford relief; and

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

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

WHEREAS, the Department of City Planning, as Lead Agency, 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. 10DCP029K, dated May 10, 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

*Therefore it is Resolved* that the Board of Standards and Appeals adopts the CEQR determination of the Department of City Planning and makes the required findings under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of nine four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and five of the nine buildings also do not provide the required rear yard, contrary to ZR § 23-47; *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 "April 29, 2011"- (17) sheets; and *on further condition*:

THAT any change in ownership, operator, or control shall require the prior approval of the Board;

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

THAT the parameters of the proposed buildings shall be as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed buildings shall be subject to DOB review and approval;

THAT this approval is limited to the relief granted by the

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Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

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

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, May 3, 2011.

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## 165-10-BZ thru 172-10-BZ

### CEQR #10-DCP-029K

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37<sup>th</sup> Street, South side of 37<sup>th</sup> Street between 12<sup>th</sup> Avenue and 14<sup>th</sup> Avenue, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated December 1, 2010 and January 10, 2011, acting on Department of Buildings Application Nos. 320190280, 320190119, 320190093, 320190100, 320190299, 320190397, 320190306, and 320190315, read, in pertinent part:

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required rear yard (23-47 ZR).

[and/or]

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required distance between a legally required window and a lot line (23-861 ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to

ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 23-47; and

WHEREAS, a companion variance application, filed under BSA Cal. Nos. 156 through 164-10-BZ, for Block 5295, Lots 4, 104-108, 111-113 was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, this application is brought on behalf the City of New York and will be developed under the auspices of the New York City Department of Housing Preservation and Development (HPD) (the “applicant”), which will restrict the use to affordable housing under HPD’s New Foundations Program; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

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

WHEREAS, the site is located on the south side of 37<sup>th</sup> Street, between 13<sup>th</sup> Avenue and 14<sup>th</sup> Avenue, and the applicant proposed to subdivide the existing lot into six individual zoning lots; five will be developed with a total of eight four-family buildings (eight tax lots) and one lot will be developed with off-street parking facilities accessory to existing community facilities located behind the site on 38<sup>th</sup> Street and not included in the proposed residential request; and

WHEREAS, the site has a width of 604.19 ft., a depth of 50 ft., and a lot area of 31,358.5 sq. ft., and is currently within an (MX) M1-2/R6A zoning district (the site was rezoned as part of the Culver El rezoning on October 27, 2010 from an M2-1 zoning district); and

WHEREAS, the site is located within a former railroad right-of-way known as the Culver El, which was formerly occupied by an elevated railroad line, which was demolished in 1985, and a ground level railroad; and

WHEREAS, the applicant states that because the site is located within a former railroad right-of-way, it was required to seek a special approval from the City Planning Commission pursuant to ZR § 74-681, which it has done; and

WHEREAS, additionally, the applicant states that HPD obtained a designation of an Urban Development Action Area Project (UDAAP) and Disposition of city-owned property to permit the disposition of the site and to permit development of the proposed affordable housing; and

WHEREAS, the applicant proposes to construct a total of 17 four-story four-family buildings and a total of 68 affordable housing units across the subject block and the companion Block 5295;

WHEREAS, of the eight subject buildings, each of the three single buildings will have 6,453 sq. ft. of floor area and each of the three double buildings will have between 12,746 sq. ft. and 14,168 sq. ft.; all non-corner buildings propose a rear yard with a depth of 10 feet and one side yard with a width of 9’-6”;

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the proposed residential units; and

WHEREAS, the buildings will have a complying wall height of 40'-0", and a total height of 47'-9", at the peak of the roof; and

WHEREAS, the applicant proposes to provide a rear yard/minimum distance to the rear lot line and open areas of between 9'-6" and 15'-8" in between the buildings and rear yards with depths/distance from required windows to lot line of 10'-0" (rear yards and distance from required window to lot line with a minimum depth of 30'-0" are required); and

WHEREAS, the applicant notes that although the buildings do not provide the minimum distance requirement, the open areas exceed the side yards required pursuant to ZR § 23-561; 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 compliance with underlying district regulations: (1) the history of the site as a railroad right-of-way; (2) the shallow depth; and (3) the programmatic needs of HPD's housing initiative; and

WHEREAS, as to the history of the site, the applicant states that the site was occupied by the elevated railroad line (BMT Culver Shuttle transit line) and the ground level South Brooklyn Railroad, both of which stopped service in the 1970's; the elevated train infrastructure occupied the site until its demolition in 1985; and

WHEREAS, the applicant states that after the Metropolitan Transit Authority surrendered its interest in the site, the City has leased and/or sold portions of the site for uses including affordable residential development and accessory parking for surrounding institutions and businesses; and

WHEREAS, the applicant states that in recent years, the City announced an initiative to stimulate development of the site with affordable housing, which is in great demand in the surrounding Borough Park neighborhood; and

WHEREAS, the applicant notes that the rezoning of the subject site and portions of the surrounding area and other associated actions are a culmination of several years of effort from the Department of City Planning, HPD, elected officials and local organizations to make a productive use of the abandoned railroad right-of way; and

WHEREAS, as to the site's depth, the applicant notes that the site's unusual length and depth of 50 feet may have been sufficient for the railroad which did not require a standard block depth for its infrastructure, but that nearly all sites in the area have depths ranging from 80 feet to 150 feet, with the majority having depths of 80 to 100 feet; and

WHEREAS, the applicant proposes to provide a rear yard and a distance from wall to lot line with a depth of 10 feet along the rear lot line in order to provide a building depth of 40 feet and open areas with widths of between 9'-6" and 15'-8" between the buildings and side lot lines; and

WHEREAS, the applicant notes that, although the buildings do not meet the minimum distance between required window and lot line requirement of 30 feet, the proposed open area exceeds the side yards (0 ft. or a minimum of 8 ft., if provided) required pursuant to ZR § 23-651; and

WHEREAS, the applicant submitted as-of-right plans

which reflect that in order to construct complying buildings which satisfy HPD's programmatic need of accommodating the maximum available floor area, the buildings would be six stories in height with depths of only 20 feet, which would result in inefficient floorplates and buildings that would not satisfy HPD's needs and also not be able to accommodate off-street parking; and

WHEREAS, further, the applicant notes that the as-of-right buildings with interior space required for required exits, elevators, and circulation space would render the buildings extraordinarily expensive and impractical to construct; and

WHEREAS, the applicant also notes that ZR § 23-52 (Special Provisions for Shallow Interior Lots) provides that on a lot that is 50 ft. in depth, a rear yard of ten feet is permitted; and

WHEREAS, however, the applicant notes that as a result of the subject site being subdivided into multiple zoning lots (as required by HPD's programmatic needs), after December 15, 1961, the site does not meet the condition precedent required for the rear yard reduction; and

WHEREAS, the applicant notes that the post-1961 creation of the individual zoning lots is not the cause for the shallow lot condition, which is associated with the unique history and usage of the subject site as a railroad right-of-way that has been abandoned; and

WHEREAS, the applicant asserts that maintaining the site as a single zoning lot would result in the requirement to comply with ZR § 23-711 for providing a minimum distance of between 30 and 50 feet between buildings which would drastically limit the amount of development on the site; and

WHEREAS, additionally, the applicant notes that the minimum distance between required window and lot line regulations would not apply if the proposed buildings were limited to a maximum of three stories – three units and 32 ft. in height; and

WHEREAS, the applicant asserts that such a height limit would result in a loss of 25 percent of the development and not allow HPD to satisfy its programmatic need and it would still be contrary to the rear yard requirement of 30 feet; and

WHEREAS, the applicant represents that the as-of-right plan would also require that the lowest floor would be a basement, not at grade, and that it would require installation of an ADA-accessible entry ramp at the basement floor level, requiring that the first floor be set back; and

WHEREAS, the applicant notes that the proposed design reflects one unit per floor (which is well within the density limitations) and, thus, each unit will include frontage on 37<sup>th</sup> Street, which has a width of 60 feet, and there will not be any units that only have exposure to the rear yard; and

WHEREAS, as to the uniqueness of the site conditions, the applicant notes that the railroad right-of-way has affected only a narrow strip along five city blocks in the area and that the two sites seeking variances are the last that have not been the subject of other discretionary actions to allow for their development; and

WHEREAS, as to HPD's programmatic need, the applicant states that the Department of City Planning and HPD have executed a series of land use actions to facilitate the

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development of the subject site with a series of homes under HPD's affordable housing initiatives and that the proposal was subject to extensive review by HPD's Division of Architecture, Construction, and Engineering to insure compliance with HPD's standards as to habitability and site plan design; and

WHEREAS, accordingly, the applicant represents that the proposed site plan meets HPD's standards for buildings of sufficient size and density that are feasible to construct; and

WHEREAS, the applicant represents that the proposed design complies with HPD's programmatic and quality of life requirements; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of HPD's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the site is currently owned by the City and proposed for development with affordable housing by a non-profit entity to be selected by HPD in furtherance of its mission; 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 states that the uses adjacent to the proposed rear yards are a mix of manufacturing, community facility, and residential uses as well as vacant sites; and

WHEREAS, the applicant asserts that the only residential uses abutting the portions of the site associated with the waivers, are located adjacent to proposed corner lots for which no rear yard waivers are sought; and

WHEREAS, the applicant notes that the distance between these existing residential/mixed use buildings and the proposed dwelling units is ten feet which is greater than the required side yards; and

WHEREAS, the applicant states that the proposed development has been reviewed by the Department of City Planning, which was the applicant for the rezoning, text change, and special permits, as well as by HPD, which is the applicant for the UDAAP and will select the non-profit developer for the project, pursuant to which the buildings will be constructed; and

WHEREAS, the applicant cites to the City's Uniform Land Use Review Procedure (ULURP) application, which says that "the project area consists of underutilized property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, insanitary and blighting conditions. The project activities would protect and promote health and safety and would encourage sound growth and development;" and

WHEREAS, the applicant also cites to the Department of City Planning's special permit application for the construction within the railroad right-of-way in which it states that (1) the streets providing access to the site are adequate to handle traffic generated from the proposed use of the site; (2) the bulk and density do not affect the character of the surrounding area; and

(3) the proposed and existing uses do not adversely affect each other; 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 site conditions including the site's former use as a railroad right-of-way; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except required rear yards and minimum distance between required windows and lot lines is the minimum necessary to afford relief; and

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

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

WHEREAS, the Department of City Planning, as Lead Agency, 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. 10DCP029K, dated May 10, 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

*Therefore it is Resolved* that the Board of Standards and Appeals adopts the CEQR determination of the Department of City Planning and makes the required findings under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 23-47; *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 "April 29, 2011"– (15) sheets; and *on further condition*:

THAT any change in ownership, operator, or control shall require the prior approval of the Board;

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

THAT the parameters of the proposed buildings shall be

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as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed buildings shall be subject to DOB review and approval;

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

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

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

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, May 3, 2011.

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## 7-11-BZ

### CEQR #11-BSA-054M

APPLICANT – Sheldon Lobel, P.C., for NRP LLC II, owners; Dyckman Fitness Group, LLC, lessee.

SUBJECT – Application January 26, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 177 Dyckman Street, southeast corner of the intersection of Dyckman Street and Vermilyea Avenue, Block 2224, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated January 4, 2011, acting on Department of Buildings Application No. 120565842, reads in pertinent part:

“Proposed change of use to physical culture establishment is contrary to ZR 32-10 and must be referred to the BSA for approval pursuant to ZR 73-36;” and

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

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

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

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Dyckman Street and Vermilyea Avenue, within a C4-4 zoning district; and

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

WHEREAS, the PCE occupies the cellar, a portion of the first floor, and the entire second floor of the subject building, with a total floor area of 14,486 sq. ft.; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: 24 hours a day from Monday at 12:00 a.m. through Friday at 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since May 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between May 2008 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA054M, dated January 21, 2011; 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;

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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 Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-4 zoning district, the legalization of a physical culture establishment at the cellar, first and second floors of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 15, 2011"- (5) sheets and *on further condition*:

THAT the term of this grant shall expire on May 1, 2018;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, May 3, 2011.

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## 201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district.

REMISES AFFECTED – 40-38 216<sup>th</sup> Street, between 215<sup>th</sup>

Place and 216<sup>th</sup> Street, 200' south of 40<sup>th</sup> Avenue, Block 6290, Lot 70, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

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## 24-09-BZ

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

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

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

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

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## 45-10-BZ

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

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

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

## COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 24, 2011, at 1:30 P.M., for adjourned hearing.

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## 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.

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## COMMUNITY BOARD #3M

### APPEARANCES –

For Applicant: Patrick Jones and James Chin.

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 1:30 P.M. for continued hearing.

## 119-10-BZ

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

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

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

## COMMUNITY BOARD #14Q

### APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 1:30 P.M., for adjourned hearing.

## 196-10-BZ

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

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

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

## COMMUNITY BOARD #6M

### APPEARANCES –

For Applicant: James Chin.

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

## 13-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461 and 23-48); and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1040 East 26<sup>th</sup> Street, west side of East 26<sup>th</sup> Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### 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 May 24, 2011, at 1:30 P.M., for decision, hearing closed.

## 16-11-BZ

APPLICANT – Eric Palatnik, P.C., for Judah Rosenweig, owner.

SUBJECT – Application February 14, 2011 - 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.

PREMISES AFFECTED – 181-30 Aberdeen Road, between Surrey and Tyron Place, Block 7224, Lot 34, Borough of Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 7, 2011, at 1:30 P.M., for decision, hearing closed.

## 20-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18<sup>th</sup> Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18<sup>th</sup> Street, south side of West 18<sup>th</sup> Street, Block 819, Lot 59, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

### THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 24, 2011, at 1:30 P.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*