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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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June 16, 2011

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## DIRECTORY

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*Commissioners*

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 65-90-BZ            61-19 190<sup>th</sup> Street, Queens  
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**Affecting Calendar Numbers:**

160-08-BZ           651-671 Fountain Avenue, Brooklyn

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# DOCKET

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New Case Filed Up to June 7, 2011  
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**73-11-BZ**

70 Tennyson Drive, North side Tennyson Drive between Nelson Avenue and Cleveland Avenue., Block 5212, Lot(s) 70, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to allow a four story, 100 unit residential building contrary to bulk regulations. C3A/SRD zoning district. C3A, SRD, LDGMA district.  
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**74-11-BZ**

1058 Forest Avenue, South east intersection of Forest Avenue & Manor Road in the West Brighton neighborhood of Staten Island., Block 315, Lot(s) 29, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow for the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district. R3-2 & R-2 district.  
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**75-11-A**

2230-2234 Kimball Street, Kimball Street between Avenue U and Avenue V., Block 8556, Lot(s) 55, Borough of **Brooklyn, Community Board: 18**. Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administr R4 district.  
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**76-11-BZ**

2263 East 2nd Street, East side of East 2nd Street, approximately 235 feet south of Gravesend Neck Road., Block 7154, Lot(s) 68, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing family home contrary to floor area (23-161) and rear yard (23-47) regulators R4/OP zoning district. R4/OP district.  
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**77-11-A**

35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets., Block 633, Lot(s) 39 & 140, Borough of **Queens, Community Board: 1**. An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 Zoning District regulations. R6B zoning district. R6B district.  
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**78-11-BZ**

78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550, Borough of **Queens, Community Board: 13**. Variance (72-21) for the construction of a mixed-use building containing residential and community facility uses, contrary to use regulation. C8-1 zoning district. C8-1 district.  
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**79-11-A**

54-14 74th Street, West side of 74th Street 100 feet south of the corner formed by the intersection of 74th Street & Grand Avenue., Block 2803, Lot(s) 28, Borough of **Queens, Community Board: 5**. An appeal challenging the Department of Buildings interpretation of Minor Alterations and Ordinary Repairs as per New York City building code. M1-1 district.  
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**80-11-A**

331 East 9th Street, North side of East 9th Street between 1st and 2nd Avenues., Block 451, Lot(s) 46, Borough of **Manhattan, Community Board: 3**. Appeal pursuant to Section 310 of the Multiple Dwelling Law requesting variance to allow for enlargement of the subject building. R8B zoning district . R8B district.  
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**81-11-BZ**

1382-4 Metropolitan Avenue, South side of Parkchester Road, approximately 200' east of intersection of Parkchester Road and Metropolitan Avenue., Block 3938, Lot(s) 7501, Borough of **Bronx, Community Board: 9**. Special Permit (73-36) to allow the operation of a physical culture establishment (Blink Fitness). C4-2 zoning district C4-2 (PC) 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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**JUNE 21, 2011, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 21, 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**

**49-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for JZB Holdings LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Time to complete construction of a previously granted variance (72-21) for the construction of a two story commercial building which expired on May 8, 2011. R3-2/C1-2 zoning district.

PREMISES AFFECTED – 2041 Flatbush Avenue, Southeastern corner of the intersection of Flatbush Avenue and Baughman Place. Block 7868, Lot 18. Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
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**APPEALS CALENDAR**

**29-11-A & 30-11-A**

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's determination that the sign permit lapsed on February 27, 2001. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**32-11-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Margaret McLaughlin, lessee.

SUBJECT – Application March 29, 2011 – Proposed construction not fronting on a mapped street, contrary to General City Law Section 36, Article 3 within an R4 zoning district.

PREMISES AFFECTED – 6 Graham Place, south side, 230' west of mapped Beach 201<sup>st</sup> Street, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**62-11-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O'Brien, lessees. SUBJECT – Application May 10, 2011 – An appeal challenging a Department of Building determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per. Fire Department of New York section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217<sup>th</sup> Street, east side of Beach 217<sup>th</sup> Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**63-11-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Raymond & Raymond Walsh, lessees.

SUBJECT – Application May 10, 2011 – An appeal challenging a Department of Building determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per Fire Department of New York section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216<sup>th</sup> Street, east side of Beach 216<sup>th</sup> Street, 280' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**77-11-A**

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – An Administrative Appeal pursuant to the common-law doctrine of vested rights, requesting a determination that the owner of the premises has completed substantial construction and incurred substantial financial expenditures prior to a zoning amendment and therefore should be permitted to complete construction.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

**COMMUNITY BOARD #1Q**  
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# CALENDAR

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**JUNE 21, 2011, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 21, 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**

**22-11-BZ**

APPLICANT – Simons & Wright, LLC, for Agama LLC, owner; Vorea Holdings LLC, lessee.

SUBJECT – Application March 1, 2011– Variance (§72-21) to permit the conversion of a vacant warehouse to a physical culture establishment. R6B zoning district and Williamsburg Greenpoint IBZ.

PREMISES AFFECTED – 184 North 8<sup>th</sup> Street, between Driggs and Bedford Avenues, Block 2320, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**27-11-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.

SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.

PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**36-11-BZ**

APPLICANT – Francis R. Angelino, Esq., for 270 Greenwich Street Associates LLC, owner; SoulCycle Tribeca, LLC, lessee.

SUBJECT – Application April 1, 2011 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (*SoulCycle*) located in a C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street/103 Warren Street, west side of Joe DiMaggio Highway, Block 142, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**37-11-BZ**

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.

SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141; side yards §23-461 and §23-48 and less than the required rear yard §23-47. R-2 zoning district.

PREMISES AFFECTED – 1337 East 26<sup>th</sup> Street, east side,

300' of Avenue M and East 26<sup>th</sup> Street, Block 7662, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**59-11-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.

SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.

PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 7, 2011  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**307-81-BZ**

APPLICANT – Francis R. Angelino, Esquire, for 50 East 69th Street Corporation, owner.

SUBJECT – Application March 14, 2011 – Extension of Term of a variance (§72-21) which permitted a five-story medical office (UG 6) and owner occupied penthouse apartment (UG 2), scheduled to expire on September 15, 2011. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 69<sup>th</sup> Street, South side between Madison and Park Avenues. Block 1383, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Francis R. Angelino.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted variance for a five-story medical office (Use Group 6) with an owner-occupied penthouse apartment (Use Group 2); and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

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

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

WHEREAS, the site is located on the south side of East 69<sup>th</sup> Street, between Madison Avenue and Park Avenue, within an R8B zoning district; and

WHEREAS, the subject site is occupied by a five-story medical office building with an owner-occupied penthouse apartment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1981 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing five-story mezzanine and penthouse building from a school into a medical office building with an owner-occupied penthouse apartment, for a term of ten

years; and

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

WHEREAS, most recently, on April 9, 2002, the Board extended the term of the variance for an additional ten years, to expire on September 15, 2011; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on September 15, 1981, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from September 15, 2011, to expire on September 15, 2021; *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked ‘Received March 14, 2011’–(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 15, 2021;

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. 120550705)

Adopted by the Board of Standards and Appeals, June 7, 2011.

**65-90-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Street Retail Incorporated, owner; Meadows Spa, lessee.

SUBJECT – Application March 1, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Meadows Spa*) which expired on January 29, 2011; Amendment to re-locate establishment from first floor to the cellar. C4-1/PC zoning district.

PREMISES AFFECTED – 61-19 190<sup>th</sup> Street, Northeast corner formed by the intersection of 190<sup>th</sup> Street and 64<sup>th</sup> Avenue. Block 7117, Lot 4, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Sandy Anagnostou.

**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

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Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on January 29, 2011, and an amendment to eliminate the PCE use from the first floor and re-locate floor space in the cellar; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

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

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

WHEREAS, the PCE is located on the northeast corner of 190<sup>th</sup> Street and 64<sup>th</sup> Avenue, in a C4-2 zoning district within the Special Planned Community Preservation District; and

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

WHEREAS, the PCE occupies a total of 2,920 sq. ft. of floor area on the first floor of the subject building, with an additional 6,753 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 29, 1991 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on January 29, 2001; and

WHEREAS, most recently, on July 17, 2001, the Board extended the term of the PCE for an additional ten years, which expired on January 29, 2011; and

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

WHEREAS, the applicant also requests an amendment to eliminate the PCE use at the first floor, and to provide additional floor space for the PCE at the cellar; and

WHEREAS, the applicant states that the requested amendment will result in a reduction of the total floor space occupied by the PCE, from 9,673 sq. ft. to 7,269 sq. ft., with 7,059 sq. ft. of floor space located in the cellar, and 210 sq. ft. of floor area located on the first floor for the entrance to the PCE; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on January 29, 1991, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 29, 2011, to expire on January 29, 2021, and to permit the noted amendment to the previously-approved plans; *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked ‘Received March 1, 2011’-(2) sheets and ‘May 31, 2011’-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 29, 2021;

THAT the above condition shall be listed on the

certificate of occupancy;

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

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

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. 401193800)

Adopted by the Board of Standards and Appeals, June 7, 2011.

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## 95-97-BZ

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

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

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

## COMMUNITY BOARD #6Q

### 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, this is an application for waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on May 1, 2007, and an amendment to the site plan to reflect the existing signage; 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 15, 2011, March 29, 2011, and May 3, 2011, and then to decision on June 7, 2011; and

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

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

WHEREAS, the PCE is located on the northwest corner of Austin Street and 70<sup>th</sup> Avenue, within a C4-5X zoning district; and

WHEREAS, the PCE occupies 22,316 sq. ft. of floor area

# MINUTES

and 3,863 sq. ft. of floor space in the cellar of a four-story commercial building; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on May 1, 2007; and

WHEREAS, at the time of the original approval and a subsequent amendment, the site was within a C8-2 zoning district, which has since been rezoned to C4-5X; and

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

WHEREAS, at hearing, the Board questioned whether the sign at the rear of the site, which was not shown on the previously approved plans, complies with relevant regulations; and

WHEREAS, in response, the applicant moved the sign at the rear of the site down to a maximum height of 40 feet and confirmed that the size of all signage at the site is either pre-existing pursuant to the prior C8-2 zoning district parameters or will comply with the current C4-5X regulations; and

WHEREAS, the applicant provided evidence that a permit has been obtained to legalize the sign at the rear of the site pursuant to the current C4-5X zoning regulations and a photograph reflecting that the sign was relocated; and

WHEREAS, the Board notes that the signage at the site is subject to DOB approval; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on December 16, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 1, 2007, to expire on May 1, 2017, *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 October 14, 2010’-(6) sheets and ‘June 1, 2011’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 1, 2017;

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

THAT signage at the site shall not exceed that reflected on the BSA-approved plans;

THAT all new signage shall comply with C4-5X zoning district regulations and shall be subject to DOB review and approval;

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. 401714061)

Adopted by the Board of Standards and Appeals, June 7, 2011.

## 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** – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued operation of a parking facility accessory to a permitted automotive repair use (Use Group 16), which expired on December 12, 2010; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on June 7, 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 2 Staten Island, recommends approval of this application with the following conditions: (1) the parking lot be used exclusively for parking of vehicles for the businesses located at 2018 Hylan Boulevard; (2) no accessory parking from any other business be permitted and that signage on the site indicate the parking restrictions; and (3) the gate on Jefferson Avenue remain closed and locked at all times; and

WHEREAS, the site is located on the southeast corner of Hull Avenue and Hylan Boulevard, partially within a C8-1 zoning district and partially within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2000 when, under the subject calendar number, the Board granted a variance to permit, on a site divided by a zoning district boundary, a



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parking facility within the R3-2 portion of the site, accessory to a permitted automotive repair use (Use Group 16) with accessory retail sales existing within the C8-1 portion of the site, for a term of ten years, which expired on December 12, 2010; and

WHEREAS, the applicant notes that since the time of the original grant, the Department of City Planning rezoned the subject R3-2 zoning district to an R3-1 zoning district; and

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

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a notarized statement from the owner stating that the site will be used solely for accessory parking for 2018 Hylan Boulevard, and that no accessory parking from any other businesses will be permitted at the site; and

WHEREAS, the applicant also submitted photographs of signage on the site reflecting the parking restrictions; and

WHEREAS, as to the Community Board's request that the gate on Jefferson Avenue remain closed and locked at all times, the applicant states that this restriction was not a condition of the prior Board grant, and that closing the gate on Jefferson Avenue will generate more traffic on Hull Avenue and will impede maneuverability inside the lot; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been installed on the site in accordance with the previously-approved plans; 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 *reopens*, and *amends* the resolution, dated December 12, 2000, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 12, 2010, to expire on December 12, 2020; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received December 22, 2010'-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on December 12, 2020;

THAT the parking facility shall be used solely for accessory parking for the businesses located at 2018 Hylan Boulevard;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 500398018)

Adopted by the Board of Standards and Appeals, June 7, 2011.

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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 Variance (§72-21) for a seven-story hotel with penthouse (*The Greenwich Hotel*). The amendment seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/Tribeca Mixed Use (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**

APPEARANCES –

For Applicant: Elena Aristova.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to ZR §§ 35-24 and 111-104; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

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

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and North Moore Street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 16, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to floor area ratio and height and setback as set forth at ZR §§ 35-24 and 111-104; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize certain conditions that do not conform to the Board-approved plans; and

WHEREAS, the applicant seeks to remedy its failure to obtain approval from the Landmarks Preservation Commission (LPC) for the proposal it presented to the Board within the context of its 2005 application; and

WHEREAS, the Board notes that during the hearing process for the 2005 application, the applicant represented to the Board that its proposal had been approved by the LPC, but the iteration before the Board had not, in fact, been approved

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by the LPC; and

WHEREAS, subsequent to the Board's 2005 approval, the applicant constructed the hotel pursuant to the Board approved plans; and

WHEREAS, upon its discovery that the built conditions were inconsistent with an earlier LPC approval, which had not been before the Board, the LPC required the applicant to make changes to the penthouse and rooftop; and

WHEREAS, the applicant revised the penthouse and rooftop design in accordance with the LPC and the LPC issued a Certificate of Appropriateness, dated January 21, 2011; and

WHEREAS, the applicant states that the amendment is now necessary in order to reflect the LPC-approved revised penthouse and rooftop plan; and

WHEREAS, the applicant notes that the modifications include changes to the penthouse footprint; the removal of a mansard roof; and the addition of brick cladding to match the hotel's façade; and

WHEREAS, the applicant represents that the remainder of the building reflects the conditions of the 2005 Board-approved plans and the LPC did not require any additional modification; and

WHEREAS, the applicant represents that the revised plans do not trigger any new zoning non-compliance; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 16, 2005, so that as amended this portion of the resolution shall read: "to permit amendments to the penthouse and rooftop design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received April 7, 2011'-(6) sheets; and *on further condition*:

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

THAT all construction shall be performed and maintained in accordance with the LPC Certificate of Appropriateness # 11-5961, dated January 21, 2011;

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. 102666394)

Adopted by the Board of Standards and Appeals, June 7, 2011.

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## 1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15<sup>th</sup> Avenue and Ovington Avenue/68<sup>th</sup> Street, Block 5565, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra 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 June 21, 2011, at 10 A.M., for decision, hearing closed.

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## 827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139<sup>th</sup> Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

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## 502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Herndez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

### COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Glendon Dockery.

**ACTION OF THE BOARD** – Laid over to July 26, 2011, at 10 A.M., for continued hearing.

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## 739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.

SUBJECT – Application April 19, 2011 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2011. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

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## 586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65<sup>th</sup> Street Auto Service Center, Incorporated, lessee.

SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (*Emporium*) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.

PREMISES AFFECTED – 1302/12 65<sup>th</sup> Street, southeast corner of intersection of 65<sup>th</sup> Street and 13<sup>th</sup> Avenue, Block 5754, Lot 8, Borough of Brooklyn.

### COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Todd Dale.

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

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## APPEALS CALENDAR

## 202-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for Long Island City Partners, LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 29-11 39<sup>th</sup> Avenue, north side of 39<sup>th</sup> Avenue between 29<sup>th</sup> and 30<sup>th</sup> Street, Block 384, Lots 31 and 32, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ian Rasmussen.

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

THE VOTE TO GRANT –

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

Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of 39<sup>th</sup> Avenue, between 29<sup>th</sup> Street and 30<sup>th</sup> Street; and

WHEREAS, the site has 50 feet of frontage on 39<sup>th</sup> Avenue, a depth of approximately 99 feet, and a total lot area of approximately 4,969 sq. ft.; and

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

WHEREAS, the Building is proposed to have a floor area of 24,480 sq. ft.; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5D, and extended the Special Long Island City District to the subject site; and

WHEREAS, on December 4, 2007, New Building Permit No. 402641888-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the proposed nine-story hotel building; and

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

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

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

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

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

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right

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

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

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

WHEREAS, by letter dated November 22, 2010, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

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

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

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be

considered for vesting purposes; accordingly, only the work performed as of October 7, 2010 has been considered; and

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, 100 percent of the superstructure and exterior of the Building, and the installation of all hardware, doors and fixtures for the Building; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; an affidavit from the general contractor; financial records; a list of expenditures; copies of cancelled checks; and photographs of the site; and

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

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$3,663,059, or 97 percent, out of the approximately \$3,769,000 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, a list of expenditures, and copies of cancelled checks as evidence of the payments made by the applicant; and

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

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

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

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

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402641888-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on June 7, 2013.

Adopted by the Board of Standards and Appeals, June 7, 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 –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to June 14, 2011, at 10 A.M., for adjourned hearing.

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## 176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2<sup>nd</sup> Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Jordan Most, Lyor Zhoranichny.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for continued 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.

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 July 12, 2011, at 10 A.M., for decision, hearing closed.

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

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

LLC, owner.

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

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

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 21, 2011, at 10 A.M., for decision, hearing closed.

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## REGULAR MEETING TUESDAY AFTERNOON, JUNE 7, 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

### 304-09-BZ

#### CEQR #10-BSA-028K

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

### COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

**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

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Commissioner, dated October 9, 2009, acting on Department of Buildings Application No. 320024709, reads, in pertinent part:

“42-00. Proposed residential use is not permitted within a manufacturing district; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-4 zoning district within the East New York Industrial Business Zone (“IBZ”), the proposed construction of a six-story mixed-use residential/community facility building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in *The City Record*, with continued hearings on July 27, 2010, January 11, 2011, March 1, 2011, and April 5, 2011, and then to decision on June 7, 2011; and

WHEREAS, this application is brought on behalf of Women in Need, Inc. (“WIN”), a not-for-profit entity; and

WHEREAS, Community Board 16, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Members Diana Reyna and Erik Martin Dilan recommend disapproval of this application; and

WHEREAS, representatives of the Brooklyn Chamber of Commerce, the East New York Business Improvement District, the East Brooklyn District Management Association, and the Local Development Corporation of East New York provided testimony in opposition to this application; and

WHEREAS, certain members of the community testified in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are the “Opposition;” and

WHEREAS, the Opposition had the following primary concerns: (1) the site is located within the East New York IBZ and is not appropriate for residential use; (2) the size of the building, as originally proposed, is out of context for the surrounding area; (3) there are environmentally hazardous conditions on the site; (4) there is a lack of commercial and retail services in the neighborhood; and (5) the proposal will cause a disruption of traffic patterns; and

WHEREAS, the applicant submitted letters of support for this application from Brooklyn Borough President Marty Markowitz, the Brownsville Community Development Corporation, the United Way of New York City, the Corporation for Supportive Housing, and certain members of the community; and

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

WHEREAS, the subject site is a through lot bounded by Liberty Street to the north, Junius Street to the west, and Glenmore Avenue to the south, with 400 feet of frontage on Junius Street, a depth of 111’-2”, and a total lot area of approximately 44,500 sq. ft.; and

WHEREAS, the site consists of two tax lots: Lot 1 is located on the southern portion of the site with a lot area of 20,289 sq. ft., and is currently vacant; and Lot 10 is located on

the northern portion of the site with a lot area of 20,233 sq. ft., and is currently occupied by a vacant two-story church building which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a six-story mixed-use residential/community facility building on the subject site; and

WHEREAS, the proposed building has the following parameters: a total floor area of 148,165 sq. ft. (3.33 FAR); a perimeter wall and total height of 57’-0”; a rear yard with a depth of 83’-0”; and 24 parking spaces; and

WHEREAS, the applicant states that the proposed building will provide 176 affordable housing units, with 105 units dedicated to residents with special needs; and

WHEREAS, the applicant originally proposed to construct a ten-story mixed-use residential / commercial / community facility building with a floor area of 274,688 sq. ft. (6.18 FAR), a wall height of 91’-0”, a total building height of 99’-6”, 280 residential units, and commercial and community facility space at the cellar and ground floor; and

WHEREAS, at the direction of the Board, the applicant revised its proposal to eliminate the proposed commercial use and the ground floor community facility space, reduce the residential unit count from 280 to 176, and reduce the proposed bulk of the building to the current six-story proposal; and

WHEREAS, the revised proposal also reduced the length of the street wall along Junius Street, enabling the applicant to provide a 7,600 sq. ft. park area along the southern portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) community facility space, offices, a recreation room, building service rooms, and mechanical rooms at the cellar; (2) residential units, an office, lobby and lounge at the first floor; and (3) residential units on the second through sixth floors; and

WHEREAS, since the site is located in an M1-4 zoning district within the East New York IBZ, which does not permit residential development as-of-right, the requested use waiver is required; and

WHEREAS, the applicant states that the following are unique physical conditions which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the site’s subsurface contamination and resultant need for remediation; (2) the site is encumbered with a significant slope; (3) the site abuts train tracks and elevated subway tracks; and (5) the applicant’s programmatic need to provide a sufficient number of units for project viability; and

WHEREAS, as to the contamination at the site, the applicant submitted Phase I and Phase II reports as well as an Environmental Assessment Statement which indicate that the site contains contamination which will need to be removed pursuant to Department of Environmental Protection (“DEP”) regulations; and

WHEREAS, the applicant submitted an engineer’s report which states that the remediation measures required at the site include the excavation and disposal of approximately 1,104 cubic yards of contaminated soil, the installation of a vapor

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barrier and active or passive venting system, and the addition of two feet of clean sand on top of the vapor barrier, in accordance with DEP requirements; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the remediation of the site is \$830,233; and

WHEREAS, as to the slope of the site, the applicant states that there is a drop in grade of approximately 15 feet along the eastern portion of the site; and

WHEREAS, the applicant represents that the costs associated with leveling out the site to accommodate an as-of-right building would be prohibitively expensive; and

WHEREAS, as to the adjacent train tracks, the applicant states that the eastern portion of the site abuts the Long Island Rail Road ("LIRR") and elevated subway tracks; and

WHEREAS, the applicant states that the adjacency of these structures will require the installation of sound attenuating windows and other insulation to reduce the noise pollution and vibrations produced by the trains; and

WHEREAS, the applicant represents that excavation and foundation work will have to be first approved and then monitored by MTA representatives to ensure that the construction does not affect the adjacent train tracks; and

WHEREAS, the applicant further represents that, due to the proximity of the tracks, the applicant may be required to use caissons and non-impact driven timber piles in order to avoid any impact on the tracks foundations, which will further add to the cost of construction performed on the site; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant states that a use variance is also requested based on WIN's programmatic need to provide 176 units of affordable housing, with 105 units dedicated to New York City Department of Health and Mental Hygiene ("DOHMH") special needs housing; and

WHEREAS, the applicant states that WIN's goals for this project are to help men, women, children and families who have survived domestic abuse and/or substance abuse, as well as homelessness, to become self-sufficient and to facilitate their transition back into mainstream society, and to provide affordable housing to families in need; and

WHEREAS, the applicant further states that WIN will offer social services to its residents, including educational, job training, and placement services, in order to empower the residents to become integrated into society; and

WHEREAS, the applicant submitted a letter dated November 30, 2010 from DOHMH confirming that financing of the proposed development of 105 special needs units is contemplated by the agency; and

WHEREAS, the applicant represents that it will also utilize bond and subsidy financing through the City's Housing Development Corporation, four percent Low Income Housing Tax Credits, and other subsidies, and that it intends to seek financing for the proposed project from the New York State Office of Temporary and Disability Assistances' Homeless Housing and Assistance program, from the New York State

Housing Finance Agency through a tax exempt bond and second mortgage subsidy, and from the Federal Home Loan Bank's Affordable Housing Program; and

WHEREAS, the applicant states that it has a programmatic need for the additional 71 units of affordable housing because the proposed 105 units of special needs housing, which will be funded through a contract with DOHMH, do not provide sufficient funding to develop a building large enough to meet the balance of WIN's programmatic needs, and the 71 general low-income units are essential to the project's ability to fund building amenities, such as security, which are necessary for a project with a substantive number of special needs supportive housing units; and

WHEREAS, the applicant further states that the 71 general low-income units are necessary for a housing project of this nature in order to meet WIN's programmatic need of facilitating the integration of its special needs residents back into mainstream society, because the integration success rate decreases as the percentage of units occupied by special needs residents increases; therefore, the general low-income units are required to provide the appropriate mix of units necessary to ensure the success of the project; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

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

WHEREAS, however, at the Board's direction the applicant analyzed the feasibility of a three-story as-of-right industrial building with no cellar at the site; and

WHEREAS, the financial analysis indicates that the as-of-right scenario is not financially viable due to the premium costs associated with the unique conditions of the site; 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 surrounding neighborhood is characterized by a mix of residential, community facility, commercial and manufacturing uses; and

WHEREAS, throughout the course of the hearing process, the Board raised questions about any potential effect that the introduction of residential use might have on the IBZ and future manufacturing uses on the surrounding block; and

WHEREAS, in response, the applicant submitted an aerial map reflecting that the subject site is located on the western edge of the IBZ, and states that the heavier industrial and manufacturing uses in the IBZ take place to the east of the site and that the site is separated from these uses by the LIRR tracks and the elevated subway tracks which abut the site's eastern lot line; and

WHEREAS, the applicant represents that this separation ensures that the proposed building will not have a significant

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impact on the existing businesses in the surrounding area to the east of the site; and

WHEREAS, the applicant also submitted a land use map and a survey of surrounding uses which reflects that the surrounding area to the west of the LIRR tracks and elevated subway tracks consist of a mix of residential, community facility, commercial, and manufacturing uses; and

WHEREAS, the land use map submitted by the applicant reflects that only 14 of the 103 sites analyzed are occupied by active manufacturing uses, while 25 of the sites are occupied by residential uses; and

WHEREAS, specifically, the applicant states that directly to the north of the site are two six-story buildings owned and operated by WIN which contain a total of 427 units, there are two playgrounds and a school located within two blocks to the west of the site, and there are at least nine residential buildings ranging in height from three stories to 24 stories within two blocks to the southwest of the site; and

WHEREAS, the applicant further states that the majority of the surrounding lots which are not vacant or occupied by residential uses are used as commercial parking lots for various transportation companies, reflecting that the surrounding area to the west of the LIRR and elevated subway tracks is more transportation and utility oriented and is not characterized by heavy manufacturing uses; and

WHEREAS, the applicant notes that the proposal also includes a 7,600 sq. ft. park area along the southern portion of the lot, which will serve as a buffer between the proposed building and the scrap metal recycling yard located to the south of the site; and

WHEREAS, the applicant represents that the proximity of the LIRR and elevated subway tracks does not make the site unsuitable for residential use because the tracks are located to the rear of the site and the building will be set back from the lot line to further distance the residents from the tracks, and the building will be constructed with sound attenuating windows and other insulation to reduce the noise and vibrations from passing trains; and

WHEREAS, as to bulk, the applicant notes that there is an R6 zoning district located one block to the west of the site, and the Board directed the applicant to reduce the bulk of the proposed building to its current FAR of 3.3 in order to bring it closer to what is permitted in the adjacent R6 zoning district; and

WHEREAS, the applicant states that the two buildings owned by WIN directly to the north of the site are also six-story buildings, but they each have a height of approximately 75 feet while the height of the proposed building is only 57 feet; and

WHEREAS, at hearing, the Board questioned whether the proposed residential use would be compatible with the truck traffic generated by the existing uses surrounding the property; and

WHEREAS, in response, the applicant submitted a survey and maps which reflect that the truck traffic and vehicular traffic in the surrounding area is limited due to the narrow streets and single directional flow of traffic into and out of the area and the limited number of loading docks and/or curb

cuts on the surrounding blocks; and

WHEREAS, the applicant states that pedestrian traffic from the proposed building will be in context with the existing pedestrian traffic from the two WIN facilities already located in the immediate vicinity, as well as the multiple residential buildings and numerous churches in the area; and

WHEREAS, the applicant submitted a map illustrating the anticipated routes, distances and estimated walking times to the area park/playground, convenience stores and public transportation from the site, all of which are less than one-quarter mile from the site; and

WHEREAS, the Board recognizes the Opposition's concerns regarding the site's location in the IBZ, but finds that the location of the proposed building is appropriate in the instant case for the following reasons: (1) the site has been vacant for decades and is encumbered with conditions that make industrial uses infeasible; (2) the site is located toward the western edge of the IBZ where surrounding uses are more transportation and utility related; (3) an R6 zoning district and a significant number of residential uses are located just one block away; (4) there is a significant need for housing in the surrounding area; (5) there are existing WIN buildings located immediately to the north of the site, and there is easy access to mass transit, bus routes, and commercial and recreation services; and (6) the proposal will not impede adjacent industrial uses; and

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

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

WHEREAS, as noted above, the applicant originally proposed to construct a ten-story mixed-use residential/commercial/community facility building with a floor area of 274,688 sq. ft. (6.18 FAR), a wall height of 91'-0", a total building height of 99'-6", 280 residential units, and commercial and community facility space at the cellar and ground floor; and

WHEREAS, at the Board's direction, the applicant revised its plans to eliminate the proposed commercial use and the ground floor community facility space, reduce the residential unit count from 280 to 176, and reduce the requested bulk to the current six-story proposal; and

WHEREAS, the applicant states that the proposed building is of the minimum size that can be feasibly developed for its proposed use as affordable housing; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow WIN to carry out its stated needs; 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 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



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information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10-BSA-028K dated May 23, 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, air quality and noise impacts; and

WHEREAS, DEP accepts the April 2010 Remedial Action Plan and the Construction Health and Safety Plan; and

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

WHEREAS, a site survey and permits search was conducted for the active industrial facilities for the area within a 400 foot radius of the proposed project; and

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

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a range of 28 to 35 dBA of window-wall noise attenuation and an alternate means of ventilation are required for the proposed building; 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, in an M1-4 zoning district within the East New York IBZ, the proposed construction of a six-story mixed-use residential/community building, contrary to ZR § 42-00 *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 May 25, 2011" – (9) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be: six stories; a total floor area of 148,165 sq. ft. (3.33 FAR); a perimeter wall and total height of 57'-0"; a rear yard with a depth of 83'-0"; and 24 parking spaces, 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 window-wall noise attenuation and a variable capacity air source heat recovery air-conditioning system as an alternate means of ventilation shall be provided in the proposed building as indicated on the BSA-approved plans;

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

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

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

THAT construction shall proceed in accordance with ZR § 72-23; 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, June 7, 2011.

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## 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.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 8, 2011, acting on Department of Buildings Application No. 420236809, reads, in pertinent part:

“Proposed development change is contrary to ZR

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Sections 23-141(a): floor area and to ZR 23-141(a): open space ratio and therefore requires a special permit as per ZR 73-621;" and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R1-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and open space, contrary to ZR § 23-141(a); and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

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

WHEREAS, Community Board 8, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Aberdeen Road, between Surrey Place and Tyron Place; and

WHEREAS, the subject site has a total lot area of 6,121 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,015 sq. ft. (0.49 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 3,015 sq. ft. (0.49 FAR), to 3,338 sq. ft. (0.54 FAR); the maximum floor area permitted is 3,061 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing building envelope, but to fill in a double height area on the second floor and convert the attic to useable space; and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by nine percent; and

WHEREAS, the applicant proposes to provide an open space ratio of 135 percent (150 percent is the minimum required); and

WHEREAS, as a threshold matter, in R1-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on December 15, 1961; and

WHEREAS, the applicant states that the home was constructed around 1935 and that recently, it replaced studs and walls that had rotted beyond repair, pursuant to an Alteration Type II application; and

WHEREAS, the applicant represents that all work performed pursuant to the Alteration Type II application reflected the structurally necessary in-kind replacement of existing building components and, thus, the existing home satisfies the requirement that the home existed on December 15, 1961; and

WHEREAS, in support of its assertion that the existing home constitutes a pre-1961 home for the purpose of the special permit, the applicant submitted a 1935 survey, a 1950 Sanborn Map, a survey of recent structural repair work, and an affidavit from the project architect which states that the home was built sometime before 1940; and

WHEREAS, the Board has reviewed the evidence and accepts that the existing home existed in its pre-enlarged state prior to December 15, 1961; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space ratio is ten percent of the existing and results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the existing lot coverage is a pre-existing non-complying condition, which will not be changed; and

WHEREAS, as to the floor area ratio, the applicant represents that the proposed is 109 percent of the maximum permitted under the special permit; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; 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 §§ 73-621 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R1-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and open space, contrary to ZR § 23-141(a); *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 14, 2011"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,338 sq. ft. (0.54 FAR) and a minimum open space ratio of 135 percent, as illustrated on the BSA-approved plans;

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

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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, June 7, 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. Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district.

PREMISES 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.

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 July 19, 2011, at 1:30 P.M., for decision, hearing closed.

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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 164<sup>th</sup> Street between 78<sup>th</sup> Avenue and 78<sup>th</sup> Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Kenneth D. Cohen and Peter J. Sell.

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 July 12, 2011, at 1:30 P.M., for decision, hearing closed.

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## 230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence, contrary to front yard regulations (§23-45). R-5 zoning district.

PREMISES AFFECTED – 1700 White Plains Road, northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.

### COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Peter Hirshman.

**ACTION OF THE BOARD** – Laid over to July 19, 2011, at 1:30 P.M., for continued hearing.

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## 31-10-BZ

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

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

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

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 16, 2011, at 1:30 P.M., for adjourned hearing.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August

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16, 2011, at 1:30 P.M., for adjourned hearing.  
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## 54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15<sup>th</sup> and East 16<sup>th</sup> Street, Block 7460, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES – None.

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 16, 2011, at 1:30 P.M., for adjourned hearing.  
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## 95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461 and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22<sup>nd</sup> Street and East 23<sup>rd</sup> Street, Block 6805, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.  
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## 118-10-BZ

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

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

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

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Katherine D’Ambrosi.

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 July 19, 2011, at 1:30 P.M., for decision, hearing closed.  
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## 177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to July 12, 2011, at 1:30 P.M., for adjourned hearing.  
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## 194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Baron.

**ACTION OF THE BOARD** – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.  
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## 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 – None.

**ACTION OF THE BOARD** – Laid over to July 26, 2011, at 1:30 P.M., for adjourned hearing.  
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## 197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

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SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88’ west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES – None.

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

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**1-11-BZ**

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240’ east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Don Weston and Charles Sahadi.

**ACTION OF THE BOARD** – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

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**21-11-BZ**

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik, Yevgeniy Rybak and Sergey Rybak.

**ACTION OF THE BOARD** – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

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**24-11-BZ**

APPLICANT – Jay A. Segal, Esq., Greenberg Traurig, LLP, for LaSalle New York City, Inc., owner; WCL Academy of New York LLC, lessee.

SUBJECT – Application March 8, 2011 – Variance (§72-21) to permit the construction of an elevator and vestibule in the courtyard of a school building (*WCL Academy*) contrary to floor area (§24-11), lot coverage (§24-11) and permitted

obstruction requirements (§24-51). C6-2A/R8B zoning district.

PREMISES AFFECTED – 44-50 East 2<sup>nd</sup> Street, north side of East 2<sup>nd</sup> Street, between First and Second Avenues, Block 444, Lot 59, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Jay Segal

**ACTION OF THE BOARD** – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

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*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on July 13, 2010, under Calendar No. 160-08-BZ and printed in Volume 95, Bulletin Nos. 27-29, is hereby corrected to read as follows:

### 160-08-BZ

#### CEQR #08BSA-092K

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

#### COMMUNITY BOARD #5BK

##### APPEARANCES –

For Applicant: Peter Hirschman, Frank R. Angelino.

For Opposition: Ronald J. Dillon.

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

##### THE VOTE TO GRANT –

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

Negative:.....0

##### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 3, 2008, acting on Department of Buildings Application No. 310139025, reads in pertinent part:

“The proposed commercial storage of motor vehicles (bus storage) sales and repairs Use Group 6 & 16 (replacing BSA Cal. Number 841-76-BZ and 78-79-BZ) in an R4 zoning district is not permitted as per Section 22-00 of the New York City Zoning Resolution and is referred to the BSA for a variance;”  
and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, March 2, 2010, April 13, 2010, May 25, 2010 and June 15, 2010, and then to decision on July 13, 2010; and

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

WHEREAS, Community Board 5, Brooklyn,

recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) the site is not unique; (2) the prior variances expired and therefore commercial/manufacturing use is not grandfathered on the site; (3) the site value is overpriced and a conforming development could provide a reasonable return; and (4) the proposal constitutes a self-created hardship; and

WHEREAS, several members of the community testified in support of the application; and

WHEREAS, the subject site comprises the entirety of Block 4527, bounded by Stanley Avenue to the north, Euclid Avenue to the east, Wortman Avenue to the south, and Fountain Avenue to the west, within an R4 zoning district; and

WHEREAS, the site is irregularly shaped, with approximately 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue, and a lot area of 77,729 sq. ft.; and

WHEREAS, on June 7, 1977, under BSA Cal. No. 841-76-BZ, the Board granted a variance over a portion of the subject site consisting of Lots 61, 64, 77, 78, 80, 113 and 120, to permit the enlargement in area of an existing automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, for a term of ten years; and

WHEREAS, on October 30, 1979, under BSA Cal. No. 78-79-BZ, the Board granted a variance to permit the enlargement in area of the existing automobile wrecking and dismantling establishment approved pursuant to BSA Cal. No. 841-76-BZ, onto Lots 94 and 110 (current Lot 94); and

WHEREAS, subsequently, the grants were amended and the terms extended until their expiration on June 7, 2007; and

WHEREAS, as to the Opposition’s argument that the prior variances expired and commercial / manufacturing use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the aforementioned variances related to the entirety of Block 4527 except for a 100’-0” by 190’-0” parcel at the northeast corner of the subject site (the “Northeast Parcel”); and

WHEREAS, the applicant further states that the subject site, including the Northeast Parcel, is currently occupied as an open commercial storage for bus parking, with motor vehicle repairs and accessory fuel storage (Use Group 16); and

WHEREAS, the applicant notes that the site is occupied by the operations of the L & M Bus Corporation, which provides school bus transportation for the Department of Education, Interagency Transportation Solutions, and the Department of Homeless Services, and employs 275 people predominantly from the surrounding neighborhood; and

WHEREAS, the applicant proposes to legalize the current use of the site as open commercial storage for bus parking, with repairs and accessory fuel storage; and

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WHEREAS, commercial use is not permitted in the subject R4 zoning district, thus the applicant seeks a use variance to permit the subject Use Group 16 uses; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 28-212.1, and that the applicant executed a stipulation with the Department of Buildings (“DOB”), dated November 21, 2008, which allows for operation of the site while the applicant pursues the subject application for a variance to legalize the existing conditions; 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 conforming development: (1) the irregular shape of the site; (2) the existing subsurface soil conditions at the site; (3) the history of development on the site and associated contamination; (4) the site’s location on a heavily-trafficked thoroughfare; and (5) the preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, as to the site’s irregular shape, the applicant states that the site has an irregular trapezoidal shape, with 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue; and

WHEREAS, the applicant states that the site has a maximum width of approximately 225’-0” on the northern portion of the site and a minimum width of 70’-0” on the southern portion of the site; and

WHEREAS, the applicant submitted Sanborn maps reflecting that the majority of the surrounding block and lot configurations are more regular than the subject site; and

WHEREAS, specifically, the applicant represents that the typical through block in the R4 zoning district to the east of the subject site has a uniform width of approximately 200’-0”; and

WHEREAS, the applicant states the irregular width of the subject site restricts residential development as compared to the typical 200’-0” wide through block; and

WHEREAS, in support of its argument that the irregular and unique configuration of the block constrains the development of the site to its full density, the applicant submitted plans reflecting that a rectangular-shaped site with an equivalent lot area could provide 32 two-family homes, as compared to the 28 two-family homes that can be constructed on the subject site due to the inclusion of required yards and setbacks; and

WHEREAS, during the course of the hearing process, the Board raised concerns that the Northeast Parcel was not subject to the prior variances on the site, and that when it is separated from the variance sites it is a regular site in terms of its size and shape and therefore does not suffer any hardship; and

WHEREAS, in response, the applicant states that excluding the Northeast Parcel from the subject site would create an even more irregular configuration on the remainder of the site, and as such, its inclusion is both rational and practical in order to alleviate some of the hardship on the site; and

WHEREAS, as to the soil conditions at the site, the applicant states that the site has a high water table and contains

a significant amount of urban fill that requires the use of pile foundations for the construction of each home under a complying residential development scenario; and

WHEREAS, the applicant submitted a report from a geotechnical consultant (the “Geotechnical Report”) along with area wide historical maps showing flood plains which reflect that a historic creek ran directly through the subject site, and historic and urban fill materials were deposited on the site to an average depth of nine to ten feet to raise it to the current elevation, which is approximately four to six feet above the adjacent sites; and

WHEREAS, the Geotechnical Report also reflects that groundwater was encountered at the site at a depth of nine to ten feet; and

WHEREAS, the Geotechnical Report states that the presence of existing fill materials can lead to excessive total and differential settlement, and recommends the use of pile foundations which would add an additional cost of approximately \$27,000 for each home; and

WHEREAS, the applicant states that the need for pile foundations is unique to the subject site, and submitted data from the Department of Buildings indicating that most of the recent residential developments in the surrounding area were not constructed on pile foundations; and

WHEREAS, specifically, the applicant provided evidence that only three out of 20 of the most recent residential developments in the area were constructed with pile foundations; and

WHEREAS, in addition to the need for pile foundations, the Geotechnical Report states that the site will require additional dewatering and earthwork considerations due to the unique soil conditions on the site; and

WHEREAS, the applicant represents that the aforementioned soil conditions are unique to the subject site, as adjacent properties have never been historically filled, and the path of the creek was generally in a north-south direction, such that it did not extend to any of the sites to the east which are located in the R4 zoning district; and

WHEREAS, as to the history of development on the site, the applicant states that portions of the subject site have been occupied by commercial and manufacturing uses since at least 1937, similar to the uses found within the M1-1 zone located across Fountain Avenue to the west of the site; and

WHEREAS, in support of this statement, the applicant has submitted certificates of occupancy and Sanborn Maps evidencing the prior commercial and manufacturing uses of the site; and

WHEREAS, the applicant states that the commercial history of the site is further evidenced by the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ, which permitted the continued use and expansion of the existing automobile wrecking yard and sale of new and used cars and parts with accessory automobile repairs throughout the subject site, with the exception of the Northeast Parcel; and

WHEREAS, the applicant represents that the long term use of the site for manufacturing uses is evidence that residential uses are not viable; and

WHEREAS, the applicant further represents that the

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history of manufacturing uses at the site has potentially resulted in contamination on the site that would require the excavation and disposal of soils that would increase the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that the urban fill material is contaminated by a number of hazardous materials; and

WHEREAS, the applicant states that, due to the contamination, the soil must be remediated before any residential development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation prepared by its financial analyst, which reflects a remediation cost for the entire site of approximately \$600,000, and approximately \$201,000 for the Northeast Parcel alone; and

WHEREAS, during the course of the hearing process, the Board questioned whether contamination of the Northeast Parcel should be considered as part of the site's hardship since it was never subject to the prior variances on the site, and any contamination of the Northeast Parcel may have been self-created; and

WHEREAS, in response, the applicant states that although the Northeast Parcel was not subject to the variances on the other portions of the site, the Sanborn maps submitted to the Board reflect that it nonetheless has a history of commercial use dating back to at least 1951, which pre-dates the current zoning scheme and the variances granted on the remainder of the site; and

WHEREAS, the applicant further states that the soil boring samples which evidenced high levels of contaminants that require remediation were taken from within the Northeast Parcel; and

WHEREAS, as to the site's location, the applicant states that Fountain Avenue is a 100-ft. wide, heavily-trafficked thoroughfare, and that there is a preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, the applicant represents that the high volume of commercial traffic and the resultant noise on Fountain Avenue due to the adjacent M1-1 zoning district inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial and manufacturing uses in the surrounding area diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1 zoning districts, and the M1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses, which makes the proposed site less desirable for residential use; and

WHEREAS, the applicant also provided a list of several

large commercial and manufacturing uses located in the surrounding area; and

WHEREAS, the Board does not find the location on Fountain Avenue or the surrounding uses to be unique conditions to the site, noting that Fountain Avenue and the surrounding blocks have residential uses, some of which were developed recently, suggesting that the location and surrounding uses do not directly affect the use of the site for residential development; and

WHEREAS, however, the Board finds that a conforming development of the site in strict compliance with the Zoning Resolution is not feasible due to the constraints the irregularity of the site places on maximizing the density and FAR on the site, in combination with the need to offset additional construction costs associated with the pile foundations and soil remediation; and

WHEREAS, accordingly, the Board finds that the irregular shape of the subject lot, its history of development, and its unique soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed: (1) a conforming residential development with 16 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; and (3) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, at hearing, the Board directed the applicant to revise the conforming residential scenario to maximize the number of dwelling units and floor area on the site, and to analyze an alternative with conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed: (1) a conforming residential development with 28 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; (3) the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and (4) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

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

WHEREAS, specifically, the feasibility study showed that even if the Northeast Parcel were not included within the subject site, conforming residential development would still not be feasible on the Northeast Parcel due to costs associated with the pile foundation and remediation costs; and



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WHEREAS, the applicant also submitted an analysis of a regular rectangular-shaped site with an equivalent lot area to the subject site that could accommodate 32 two-family homes and provide a reasonable return, which showed that but for the irregular shape of the site, conforming residential development would be able to overcome the additional costs associated with the pile foundations and soil remediation; and

WHEREAS, during the course of the hearing process, the Board questioned the financial analysis with regards to the site value, revenues, and cost of construction; and

WHEREAS, the Board notes that the financial consultant provided responses that addressed each issue to the satisfaction of the Board; 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 conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed development 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 residential, commercial, and manufacturing uses; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to the west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1-1 zoning districts, and the M1-1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses; and

WHEREAS, the applicant also listed a number of large commercial and manufacturing uses located in the surrounding area, including the Brooklyn Union Gas Gate Station located two blocks south of the site; the Department of Sanitation building located less than one-half mile from the site; and the United States Postal Service building located 11 blocks from the site; and

WHEREAS, the applicant notes that a portion of the subject site has been occupied commercially since at least 1937, and the majority of the site was occupied since 1979 by an automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, pursuant to the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ; and

WHEREAS, the applicant submitted a report from the Department of City Planning which discusses the decline of the residential market in the surrounding area, as well as research conducted by the Furman Center reflecting a significant increase in foreclosures; the applicant states that no new work permits have been issued by the Department of Buildings for the construction of new homes in the surrounding area since 2005; and

WHEREAS, the applicant submitted a letter from the Department of Transportation ("DOT") dated October 5, 2009, which states that the proposed action will not result in significant traffic impacts; and

WHEREAS, at hearing, the Board raised concerns with the existing use and operation of the site and its impact on nearby residential uses, noting that the existing site conditions did not satisfy the finding required to be made under ZR § 72-21(c); and

WHEREAS, the Board directed the applicant to provide an operational plan and site improvements that will minimize the impact of the proposed development on the surrounding residential uses; and

WHEREAS, as to its operational plan, the applicant states that it has reduced the number of buses operating on the site from approximately 165 to 125, including buses awaiting repair, buses undergoing bi-annual inspections, and buses on call; and

WHEREAS, the applicant further states that it has limited activities on the site to the storage and dispatch of the 125 buses, and minor repairs including oil changes and changing tires and light bulbs; and

WHEREAS, the applicant states that 20 parking spaces have been designated for employee parking on the site; the applicant represents that 20 spaces are sufficient for its 275 employees because the majority of employees walk to work or take the subway or bus and the company provides a shuttle service to and from the subway and bus stations to encourage use of public transportation among its employees; and

WHEREAS, the applicant further states that the internal circulation on the site has been improved through the creation of one contiguous site with an internal pathway to the Wortman Avenue portion of the site, permitting buses to reach the repair shop and fuel pump portion of the site without exiting the site on Wortman Avenue and re-entering on Fountain Avenue; and

WHEREAS, the applicant states that all access to the site has been consolidated with ingress and egress at the two Fountain Avenue curb cuts facing the manufacturing zoned blocks, and the three existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue will be closed, thereby eliminating all curb cuts facing residentially zoned blocks; thus, all of the bus operation on the site will be consolidated, and the traffic will be reduced along with the presence of buses on the three residentially zoned blocks opposite the site; and

WHEREAS, the applicant notes that the hours of operation for the buses at the site will be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; the hours of operation for the repair shop will be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.; and

WHEREAS, as to the site improvements, the applicant submitted a beautification plan, which includes: (1) removal of the second story of the two-story storage shed located along Euclid Avenue; (2) painting the metal repair structures on the site; (3) the installation of a new chain link fence with a height of eight feet around the perimeter of the entire site, with privacy slats installed throughout the fencing; (4) the planting of 44 new street trees and 172 new evergreen trees around the

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perimeter of the site; and (5) the installation of new sidewalks and tree pits, each with a width of four feet, on Stanley Avenue, Euclid Avenue and Wortman Avenue; and

WHEREAS, the Board notes that the implementation of the aforementioned improvements to the operational plan and site conditions is necessary in order for the applicant to satisfy ZR § 72-21(c); and

WHEREAS, as noted above, the current site conditions do not satisfy ZR § 72-21(c); thus, the Board finds it appropriate to condition the resolution on the implementation of the noted improvements to the operational plan and the site conditions and to set a timetable for the implementation of such improvements; and

WHEREAS, the Board requires the following schedule for the implementation of the noted site improvements: (1) the revised hours of operation, parking layout and internal circulation at the site will be implemented immediately upon the Board's approval of the subject variance application; (2) the removal of the second story of the storage shed and the painting of the metal repair structures will be completed by September 15, 2010; (3) the new sidewalks, tree pits, and planting strips will be installed by April 15, 2011; (4) the new fencing and slats will be installed by May 15, 2011; and (5) the proposed landscaping and the planting of street trees will be completed by July 15, 2011; and

WHEREAS, the Board notes that pursuant to ZR § 72-22, it has the authority to prescribe conditions and safeguards to the grant of a variance, and the applicant's failure to comply with such conditions constitute the basis for the revocation of the grant or the denial of a future application for renewal of the grant; 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, the Board notes that the applicant provided an analysis of a lesser variance scenario with the Northeast Parcel occupied by conforming residential development and the remainder of the site occupied by the existing bus storage use, as well as a separate analysis for the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, the applicant provided evidence that the alternative scenarios were not feasible; and

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

WHEREAS, as to the Opposition's contention that the applicant did not satisfy the ZR § 72-21 findings related to the uniqueness of the site, the ability to realize a reasonable return, and whether the hardship was self-created, the Board notes that the applicant has submitted Sanborn maps, certificates of occupancy, geotechnical reports, foundation surveys, environmental studies, several alternative schemes of

development, and numerous financial reports in support of this application, which the Board finds sufficient to satisfy these findings; 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; 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. 08BSA-092K, dated March 19, 2010; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), which does not conform with applicable zoning use regulations, contrary to ZR § 22-00; *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 June 29, 2010"- (4) sheets and "April 1, 2010"(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2013;

THAT the total number of buses on the site shall be limited to 125;

THAT the activities on the site shall be limited to the storage and dispatching of 125 buses and minor repairs;

THAT 20 parking spaces shall be provided on the site for employee parking;

THAT the existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue shall be eliminated in accordance with the BSA-approved plans;

THAT the hours of operation for bus storage and parking shall be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; and the hours of operation for the repair shop shall be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.;

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THAT the second story of the two-story accessory storage shed along Euclid Avenue shall be removed and the metal repair structures on the site shall be painted by September 15, 2010;

THAT sidewalks, tree pits, and planting strips shall be installed and maintained in accordance with the BSA-approved plans by April 15, 2011;

THAT fencing shall be installed and maintained in accordance with the BSA-approved plans, by May 15, 2011;

THAT landscaping and street trees shall be provided and maintained in accordance with the BSA-approved plans by July 15, 2011;

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

THAT a new certificate of occupancy shall be obtained by January 13, 2012;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2010.

**\*The resolution has been revised to correct the 9<sup>th</sup> condition which read: "...by May 15, 2013" now reads: "May 15, 2011". Corrected in Bulletin Nos. 23-24, Vol. 96, dated June 16, 2011.**