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106-11-BZ
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107-11-BZ
1643 East 21st Street, Located on the east side of 21st Street between avenue O and Avenue P, Block 6768, Lot(s) 84, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the enlargement of a synagogue (Congregation Yeshiva Bais Yitzchok) contrary to the bulk requirements for community facility buildings. R4-1 district. R4-1 district.

108-11-BZ
10 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 27, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the constrution of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

109-11-BZ
12 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 25, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the constrution of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

110-11-BZ
14 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 24, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the constrution of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

111-11-BZ
16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 21, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the constrution of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

112-11-BZ
2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot(s) 260, Borough of **Brooklyn, Community Board: 13**. Variance (§72-21) to legalize the enlargement of the zoning lot of a previously approved use group 18 scrap metal yard which is contrary to ZR Section 32-10. C8-1 district.

113-11-BZ
66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot(s) 76, Borough of **Bronx, Community Board: 08**. Variance (§72-21) to permit the proposed enlargement to an existing Use Group 3 nursing home which does not comply with the rear yard equivalent requirements of ZR 24-382. R7-1 zoning district. R7-1 district.

114-11-A
655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues, Block 5947, Lot(s) 1, Borough of **Bronx, Community Board: 08**. Proposed construction of a stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245 th) contrary to General City Law Section 35 . R1-1 Riverdale SNAD Zoning District . R1-1 district.

115-11-BZ
1110 East 22nd Street, west side of East 22nd Street between Avenue J and Avenue K., Block 7603, Lot(s) 62, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a single family residence located in a residential (R2) zoning district. R2 district.

116-11-A
835 Liberty Lane, west side of Liberty Lane, 139' north of Marshall Avenue, Block 16350, Lot 300, Borough of **Queens, Community Board:14**. Proposed reconstruction and enlargement of an exisitng single family home street not fronting a legally mapped street contrary to Genenral City Law Sections 36 . R4 Zoning District.

117-11-BZ
86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, Block 9885, Lot(s) 8, Borough of **Queens, Community Board: 08**. Variance (ZR 72-21) to permit the development of a new athletic center building accessory to to an exisitng Use Group 3 school. R1-2 & R5 zoning districts. R1-2 & R5 district.

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

CALENDAR

SEPTEMBER 13, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 13, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

329-59-BZ
APPLICANT – Mango & Iacoviello, LLP, for Coliseum Tenants Corporation c/o Punia & Marx, Incorporate, owner; Central Parking Systems of New York, Incorporated, lessee.
SUBJECT – Application June 1, 2011 – Extension of Term for the continued operation of transient parking in a multiple dwelling which expired on November 4, 2008; an Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003 and waiver of rules. R8/C6-6(MID) zoning district.
PREMISES AFFECTED – 910-924 Ninth Avenue aka 22-44 West 60th Street, Block 1049, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #4M

624-68-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.
SUBJECT – Application June 7, 2011 – Extension of Term of a previously granted Variance (§72-21) to permit building occupancy as a wholesale plumbing supply house (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.
PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189th Street, Block 5364, Lots 1, 5, 7, Borough of Queens.
COMMUNITY BOARD #11Q

351-05-BZ
APPLICANT – Simons & Wright LLC, for Atlas Packaging Solutions Holding Co., Inc., owner.
SUBJECT – Application August 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of six-unit, four story residential building which expired on August 22, 2010; Waiver of Rules of Practice and Procedures. M2-1 zoning district.
PREMISES AFFECTED – 146 Conover Street, northeast side of Conover Street, between Sullivan and King Streets, Block 554, Lot 29, Borough of Brooklyn.
COMMUNITY BOARD #6BK

265-08-BZ
APPLICANT – Richard Bass/Herrick, Feinstein, LLP for 70 Wyckoff, LLC, owner.
SUBJECT – Application August 11, 2011 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on August 9, 2011. M1-1 zoning district.
PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street. Block 3221, Lot 31, Borough of Brooklyn.
COMMUNITY BOARD #4BK

13-09-BZ
APPLICANT – Moshe M. Friedman, P.E. for Congregations Tehilos Yotzchok, owner.
SUBJECT – Application May 27, 2011 – Amendment to a previously approved application to allow a synagogue contrary to ZR §24-11 Floor & Lot Coverage, ZR §24-34 Front Yard and ZR §24-35 Side Yard. R5 zoning district
PREMISES AFFECTED – 5611 21st Street, East side 95' -8" North of intersection of 21st Avenue and 57th Street. Block 5495, Lot 430, Borough of Brooklyn.
COMMUNITY BOARD #12BK

APPEALS CALENDAR

219-10-A
APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.
SUBJECT – Application November 24, 2010 – An Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R5B Zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK

69-11-A & 70-11-A
APPLICANT – Sheldon Lobel, P.C., for Fiesta Latina Sports Bar Corporation, owner.
SUBJECT – Application May 23, 2011 – An appeal seeking a determination that the owner of said premise has acquired a common law vested right to continue development of prior R4-1 zoning district.
PREMISES AFFECTED – 88-11 & 88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle. Block 9830, Lot 22, 23 (tentative), Borough of Queens.
COMMUNITY BOARD #12Q

CALENDAR

SEPTEMBER 13, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 13, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

43-11-BZ
APPLICANT – Harold Weinberg, for David Waknin, owner.
SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 1296 East 21st Street, west side 220' south of Avenue R, between Avenues R and S, Block 6826, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #15BK

58-11-BZ
APPLICANT – Friedman & Gotbaum, LLP, for The Trustees of The Spence School, Incorporated, owner.
SUBJECT – Application May 4, 2011 – Variance (§72-21) to permit the expansion of a (UG 3) community facility (The Spence School) contrary to lot coverage (§24-11) and rear yard equivalent (§24-382). R8B zoning district.
PREMISES AFFECTED – 20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st. Street & the westerly side of Madison Avenue. Block 1502, Lot 59 & 12, Borough of Manhattan.
COMMUNITY BOARD #8M

82-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.
SUBJECT – Application June 8, 2011 – Special Permit (73-622) for the enlargement of an existing single family home, contrary to floor area (23-141); side yard (23-461); rear yard (23-47) regulations. R5 zoning district.
PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.
COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, AUGUST 16, 2011
10:00 A.M.

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

SPECIAL ORDER CALENDAR

1045-67-BZ
APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.
SUBJECT – Application June 14, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-01 & §72-22) for an accessory parking lot to be used for adjoining commercial uses which expired on May 18, 2011. C2-2/R-2 zoning district.
PREMISES AFFECTED – 160-10 Cross Bay Boulevard, between 160th and 161st Avenue, Block 14030, Lots 6 & 20, Borough of Queens.
COMMUNITY BOARD #10Q
APPEARANCES –
For Applicant: Michael A. Cosentino.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on May 18, 2011; and

WHEREAS, a public hearing was held on this application on July 19, 2011 after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

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

WHEREAS, the subject site consists of two zoning lots (Lots 6 and 20), which occupy an entire city block, bounded by 92nd Street to the west, 160th Avenue to the north, Cross Bay Boulevard to the east, and 161st Avenue to the south, partially within an R2 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is occupied by a post office, retail stores (Use Group 6), and an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 1973 when, under the subject calendar number, the Board granted a variance to permit, in an R2 zoning district, the construction and maintenance of an accessory parking lot for the adjoining commercial establishment, for a term of five years; and

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

WHEREAS, most recently, on May 18, 2010, the Board eliminated the term of the grant and removed the specified condition related to the permitted hours of operation of the parking lot from prior approvals; and

WHEREAS, the applicant now requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that an additional two years is required to obtain a certificate of occupancy due to the time required to repair certain site conditions and resolve the associated violations; and

WHEREAS, based upon the above, the Board finds that the requested extension of time 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 June 12, 1973, so that as amended this portion of the resolution shall read: "to permit an extension of time to obtain a certificate of occupancy, to expire on August 16, 2013; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a new certificate of occupancy shall be obtained by August 16, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application Nos. 410227712, 410227721 and 410227730)

Adopted by the Board of Standards and Appeals, August 16, 2011.

703-80-BZ
APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.
SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district.
PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.
COMMUNITY BOARD #13BK
APPEARANCES –
For Applicant: Eric Palatnik.
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, August 16, 2011.

677-53-BZ
APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.
SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.
PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289' northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.
COMMUNITY BOARD #8Q
APPEARANCES –
For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for adjourned hearing.

662-56-BZ
APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.
SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules. C1-2/R5 zoning district.
PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100' east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.
COMMUNITY BOARD #18BK
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

593-69-BZ
APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.
SUBJECT – Application May 27, 2011 – Amendment pursuant to §11-413 to convert the automotive repair bays to an accessory convenience store at an existing gasoline service station (Shell). C2-2/R5 zoning district.
PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.
COMMUNITY BOARD #9Q
APPEARANCES –
For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for postponed hearing.

586-87-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th 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 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.
COMMUNITY BOARD #10BX
APPEARANCES –
For Applicant: Todd Dale.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

172-96-BZ
APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.
SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.
PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.
COMMUNITY BOARD #3BK
APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for postponed h hearing.

58-99-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.
SUBJECT – Application May 19, 2011 – Extension of Term (§11-411) for the continued operation of a gasoline service station (Gulf) which expired on October 26, 2009; an Amendment to the previously approved plans to remove the canopy and Waiver of the Rules. R3-2 zoning district.
PREMISES AFFECTED – 18-10 Utopia Parkway, Entire block is bounded by utopia Parkway, 18th Avenue, 169th Street and 19th Avenue. Block 5743, Lot 75. Borough of Queens.
COMMUNITY BOARD #7Q
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for decision, hearing closed.

185-05-BZ
APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.
SUBJECT – Application April 20, 2011 – Extension of Term to a previously granted Variance (§72-21) for the continued operation of an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009 and waiver of the rules. C1-2/R6 zoning district.
PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.
COMMUNITY BOARD #2Q
APPEARANCES –
For Applicant: John C. Chen and Dilli R. Bhetta.
For Opposition: Patrick A. O'Brien, Community Board 2, Queens.
For Administration: Anthony Scaduto, Fire Department.
ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for continued hearing.

259-06-BZ
APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.
SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.
PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 682, Lot 60, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Lyra Altman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

302-06-BZ
APPLICANT – Harold Weinberg, for Mirrer Yeshiva, owner.
SUBJECT – Application July 8, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building which expired on June 12, 2011. R6A in OP zoning district.
PREMISES AFFECTED – 1791 Ocean Parkway, between Ocean Parkway, Avenue R and East 7th Street, Block 6663, Lot 46, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Harold Weinberg, P.E and Frank Sellitto, R.A.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

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 – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed six-story (including basement) residential building under the common law doctrine of vested rights, which was previously before the Board; and

WHEREAS, the Court of Appeals has remitted the subject case to the Board for review of the common law vesting findings; and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearings on June 14, 2011, and then to decision on August 16, 2011; and

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

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

WHEREAS, New York City Council Member G. Oliver Koppel recommends disapproval of this application; and

WHEREAS, New York State Senator Gustavo Rivera and New York State Assembly Member Jeff Dinowitz provided testimony in opposition to this application; and

WHEREAS, representatives of the Fort Independence Park Neighborhood Association provided oral and written testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the "Opposition;" and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the construction was not performed pursuant to a valid permit; (2) the foundation encroaches on City property; (3) a building that complies with R6 zoning cannot be constructed above the existing foundation; (4) substantial construction has not been performed; (5) expenditures are not adequately documented and are not substantial; and (6) the owner has not acted in good faith; and

WHEREAS, the subject site is located on the west side of Giles Place, between Heath Avenue and Canon Place, within an R4A zoning district; and

WHEREAS, the site has 125 feet of frontage along Giles Place and a lot area of 19,418 sq. ft.; and

WHEREAS, the applicant proposes to construct a six-story (including basement) residential building with a total floor area of 42,239 sq. ft. (2.18 FAR), a total height of 55'-0", and with 63 dwelling units (hereinafter, the "Building"); and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, however, on September 28, 2004 (hereinafter, the "Rezoning Date"), the area in which the site is located was rezoned from R6 to R4A by the City (CPC Res. C040516 ZMX adopted by the City Planning Commission on September 8, 2004) and approved by the City Council on the Rezoning Date; and

WHEREAS, the applicant represents that the Building complies with the former R6 zoning district parameters; and

WHEREAS, because the Building is not in compliance with the provisions of the R4A zoning district and work on the foundation was not completed as of the Rezoning Date, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; and

WHEREAS, on August 8, 2005, pursuant to the subject calendar number, the Board denied statutory and common law vested rights applications for the subject site based on the Department of Building's ("DOB") determination that the underlying foundation permit (permit No. 200869024-01-FO (the "Permit")), issued on September 7, 2004, was invalid; the Board did not evaluate the other aspects of the common law vested rights findings; and

WHEREAS, DOB's determination that the Permit was invalid was based on the fact that the plans approved prior to the R4A rezoning did not comply with the R6 zoning in effect at the time of the issuance of the Permit; and

WHEREAS, at the Court of Appeals, in consultation with DOB, the Board requested that the case be remanded for further consideration of the vesting application, in light of DOB's position that plans can be amended to correct zoning defects after zoning changes, thereby enabling applicants to pursue vested rights claims; and

WHEREAS, subsequently, on June 4, 2009, the Court of Appeals remitted the case to the Board to review "all other material aspects" of the application; and

WHEREAS, following the remand, the Board directed the applicant to resolve all non-compliances related to Job No. 200869024 with DOB; and

WHEREAS, the Board is in receipt of DOB's February 24, 2011 determination that all non-compliances related to Job No. 200869024 have been cured and the Permit is deemed valid; and

WHEREAS, however, on May 17, 2011 DOB issued a Stop Work Order for the site based on the intrusion of the foundation walls over the 1.9-ft. setback from the lot line; and

WHEREAS, on July 11, 2011, DOB issued a "Revocation of Permit(s)" letter due to building elements encroaching onto Giles Place, a public way; and

WHEREAS, the Opposition contends that this is evidence that DOB has not approved the foundation work that has been completed on the site; and

WHEREAS, however, on August 4, 2011, DOB issued a letter rescinding the July 11, 2011 revocation of the permit, and stating that the applicant sufficiently demonstrated that the encroachment of the foundation into the street as well as the concrete above the natural grade of the front yard will be

rectified once the permits are reinstated, and that the Department's February 24, 2011 determination that the Permit is validly issued stands; and

WHEREAS, accordingly, the validity of the Permit has been established and the Board's scope of review on remand is limited to the other material aspects of the common law vested rights findings; and

WHEREAS, the Opposition argues that a building that complies with the prior R6 zoning district regulations cannot be constructed on the existing foundation because portions of the foundation are located beyond the 1.9-ft. setback area and encroach onto City property, and moving the front wall back will create non-compliances with other portions of the Building; and

WHEREAS, in response, the applicant states that the encroachment represents a very small area in relation to the overall structure, and the condition was corrected with minor front wall changes that have been reviewed and approved by DOB; and

WHEREAS, the Board notes that DOB has reviewed the plans and determined that they reflect a zoning compliant building, that the applicant is required to build according to the approved plans, and that any non-compliances are subject to enforcement by DOB; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that before the Rezoning Date, the owner completed: (1) site preparation; (2) the grading of portions of the site; (3) excavation of a portion of the site; and (4) the pouring of 530 cubic yards (566 linear feet) of concrete for the retaining walls, footings, and foundation walls, or approximately 74 percent of the total concrete required for all foundation work (68 percent of the linear feet of the foundation); and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site as of the Rezoning Date; affidavits from the general contractor and foundation contractor attesting to the amount of work completed; a construction table; copies of concrete pour tickets; and invoices; and

WHEREAS, the applicant initially stated that 603 cubic yards (621 linear feet) of concrete had been poured, amounting to approximately 85 percent of the total concrete required for the foundation work (74 percent of the linear feet of the foundation); and

WHEREAS, during the course of the hearings, the Opposition argued that portions of the front wall of the foundation are located beyond the 1.9-ft. setback and encroach onto City property (Giles Place); and

WHEREAS, the Board directed the applicant to provide a survey reflecting the precise location of the foundation elements on the site; and

WHEREAS, in response, the applicant submitted a survey which reflects that certain portions of the front wall of the foundation are located beyond the setback area and encroach onto City property; and

WHEREAS, subsequently, the Board directed the applicant to provide a revised foundation plan which excludes any concrete poured in the initial 1.9-ft. setback distance and any concrete that may have been poured beyond the front property line; and

WHEREAS, in response, the applicant provided a revised foundation plan which discounted the concrete poured in the initial setback area and beyond the property line; and

WHEREAS, the applicant states that the disallowance of this concrete does not effect the design of the Building from a zoning perspective, and does not significantly effect the amount of work completed at the site as of the Rezoning Date, which was reduced from 603 cubic yards (621 linear feet) of concrete to 530 cubic yards (566 linear feet) of concrete as a result; and

WHEREAS, the applicant further states that the foundation work completed at the site is significantly more complex than the work remaining, which includes only minor clearing, completion of remaining forms, installation of remaining rebar and final concrete pours along the rear perimeter of the site, which is estimated to take approximately five additional days to complete; and

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

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was substantial enough to meet the guideposts established by case law; and

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

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended $475,000, including hard and soft costs and irrevocable commitments, out of $8,660,850 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted affidavits from the general contractor and foundation contractor, accounting tables, invoices, and concrete pour tickets; and

WHEREAS, the Opposition argues that the expenditures for the project were not adequately documented because the applicant did not provide copies of checks as evidence of the payments made; and

WHEREAS, the applicant states that it is unable to secure checks because the general contractor who controls the account is no longer involved in the project and is not readily available; and

WHEREAS, the Board finds that the affidavits from the general contractor and foundation contractor, which specifically speak to the total costs of and payments made toward foundation work on the site, in conjunction with concrete pour tickets and the invoices from the foundation contractor for work performed at the site, are sufficient in lieu of providing copies of checks as evidence to establish the expenditures made for the project; and

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

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the R4A zoning permits only detached housing and would effectively require the subdivision of the site into four separate development parcels, each of which would have separate buildings and separate foundations; and

WHEREAS, the applicant states that the maximum permitted residential FAR for the project would decrease from 2.2 FAR to 0.75 FAR if the applicant is required to comply with R4A zoning requirements, and this 66 percent decrease in FAR would result in a loss of 28,156 sq. ft. of buildable floor area for the site; and

WHEREAS, the applicant states that under the new zoning, the site could provide only eight dwelling units in four detached two-family homes, as opposed to the 63 dwelling units permitted under R6 zoning; and

WHEREAS, the applicant further states that the foundations at the site have been poured for the R6 compliant building and they have no reasonable re-use under the R4A zoning development scenario, which would effectively require four separate foundations; and

WHEREAS, the applicant represents that compliance with the R4A district parameters would also result in a loss of potential monthly rental income of approximately $49,400 and a loss of potential annual rental income of approximately $592,800 as compared to the prior R6 zoning; and

WHEREAS, the Board agrees that the serious reduction in FAR, the loss of 55 dwelling units, the reduction in rental income, and the need to redesign would result in a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Opposition contends that proposed project will have an adverse impact on the public health, safety and welfare, and cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that the application should be denied on those grounds alone; and

WHEREAS, in response, the applicant states that the facts in Putnam are distinguishable from the case at hand, and argues that the proposed project will not adversely impact the public health, safety and welfare of the surrounding area; and

WHEREAS, the Board agrees with the applicant that the facts in Putnam are distinguishable from the subject case, and notes that the question before the court in Putnam was whether the property owner had been divested of its right to construct a development pursuant to the prior zoning based on events that occurred in the 15 years subsequent to the initial determination made, under separate litigation, that the property owner had a vested right to construct under the prior zoning; and

WHEREAS, in the context of divestment, the court in Putnam stated that there are three factors relevant to whether divestment has occurred: (1) abandonment, (2) recoupment, and (3) considerations of public safety, health and welfare; and

WHEREAS, the Board notes that, unlike Putnam, the subject case concerns an initial vesting determination, and therefore the criteria set forth in Putnam for determining whether divestment has occurred is not relevant to the instant application; and

WHEREAS, the Opposition argues that this application should be denied because the developer acted in bad faith in that it had knowledge of the impending zoning change and was trying to "beat the clock," and because the applicant did not timely respond to the Board's notice of comments upon remand of the case; and

WHEREAS, in response, the applicant states that the developer was not attempting to "beat the clock," and submitted an affidavit from the general contractor stating that he had no knowledge of City Planning or the Community Board's intention to rezone the area where the site is located when the permits for the retaining wall were obtained on May 24, 2004, and that he did not become aware of the pending zoning change until the third week of July, 2004, after full building plans had been pre-filed at DOB; and

WHEREAS, as to the timeliness of its response to the Board's notice of comments, the applicant notes that one of the Board's comments was to resolve any outstanding zoning issues associated with the proposed plans with DOB, and that the delay in responding to the notice of comments was primarily due to the long review process at DOB; and

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

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 200869024-01-FO, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 16, 2011.

94-10-A

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

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

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

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Queens Borough Commissioner of the Department of Buildings ("DOB") on February 14, 2011 (the "Final Determination"), brought by the property owner (the "Appellant"); and

WHEREAS, the Final Determination states, in pertinent part:

> "Advertising sign, for which present application is filed for, is not permitted under the Zoning Resolution Section ZR 32-68;" and

WHEREAS, a public hearing was held on this appeal on May 17, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 12, 2011, and then to decision on August 16, 2011; and

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

WHEREAS, the subject site is located on the west side of 21st Street south of Astoria Boulevard within a C2-2 (R7X) zoning district; and

WHEREAS, the site is occupied by a five-story mixed-use commercial/residential building with four illuminated signs – two on its north wall and two on its south wall; and

WHEREAS, as of December 15, 1961, advertising signs were not permitted as of right within the subject zoning district; and

PROCEDURAL HISTORY

WHEREAS, the Appellant sought to replace an existing sign and to establish the legal status of the sign, so on May 21, 2009, the Appellant sought a preconsideration from DOB that the four signs be accepted as grandfathered signs per ZR § 52-83 (*Regulations Applying to Non-Conforming Signs, Non-Conforming Advertising Signs)*; and

WHEREAS, at DOB's request, on October 7, 2009, the Appellant re-submitted the request on a Zoning Resolution Determination form (ZRD1), with additional supporting documents; and

WHEREAS, the Appellant's evidence included the following: (1) Department of Taxation photographs and block and lot photographs; (2) photographs from sometime between 1970 and 1990 of signs at the site; (3) leases from the 1970s with sign companies; (4) affidavits, which assert that the signs have existed for more than 60 years; and (5) correspondence, receipts, and other documents to support the assertion that the signs have been at the site since 1950; and

WHEREAS, on April 26, 2010, DOB issued a determination, which states, in pertinent part:

> (1) Existing non-conforming advertising sign on the south wall existed prior to 12/15/1961 as shown on a tax photograph of a "Trommer's Beer" sign, dated 1939-1940; however, submitted evidence indicates time gaps from 1940 onward which demonstrate discontinuance of the use for a period of two years; therefore it cannot be restored to previous non-conforming use as per ZR 52-61.
>
> (2) No evidence of legal use of advertising sign prior to 1961 was submitted for the north wall; and

WHEREAS, the Appellant subsequently filed an appeal of the Borough Commissioner's determination at the Board; and

WHEREAS, by letter dated August 19, 2010, DOB informed the Appellant that the April 26, 2010 preconsideration could not be appealed to the Board and that the Appellant must file an application with plans of the proposed work in order to obtain a Final Determination appealable to the Board; and

WHEREAS, accordingly, the Appellant filed application numbers 420322289, 420322298, 420322270, and 42032234 to legalize the four signs; and

WHEREAS, DOB subsequently issued the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions)*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .; and

* * *

ZR § 32-68 (*Sign Regulations)*

Permitted Signs on Residential or Mixed Buildings

C1 C2 C3 C4 C5 C6

In the districts indicated, any #use# listed in Use Group 1 or 2 shall conform to the #sign# regulations for #Residence Districts# or #mixed buildings#, #residential sign# regulations shall apply to the #residential# portion.

Where non-#residential uses# are permitted to occupy two floors of the #building#, all #signs accessory# to non-#residential uses# located on the second floor shall be non-#illuminated signs#, and shall be located below the level of the finished floor of the third #story#; and

* * *

ZR § 52-11 (*Continuation of Non-Conforming Uses)*

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 (*Discontinuance)*

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C2-2 (R7X) zoning district and that the existing advertising signs are not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, DOB asserts that the Appellant must meet the ZR criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful *use*, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, DOB asserts that the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions)* which states that: "[i]f, for a continuous period of two years, either the *non-conforming use* of *land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*"; and

WHEREAS, accordingly, DOB asserts that as per the ZR, the Appellant must establish that the use was established before it became unlawful, by zoning, on December 15, 1961 and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, the Appellant asserts that because the signs existed prior to 1961, the continuity standard set forth at ZR § 52-61, which was enacted on December 15, 1961, is not applicable and that (1) a statute is to be applied prospectively, not retroactively and (2) a requirement to apply the continuity requirement at ZR § 52-61 is inconsistent with DOB's and the court's position in Yung Brothers v. LiMandri, 26 Misc.3d 1203(A) (Sup. N.Y. 2009); and

WHEREAS, in the alternate, as discussed below, the Appellant asserts that it meets the continuity requirement; and

WHEREAS, the Appellant states that ZR §§ 12-10 and 52-11 protect the continued use of the signs as "'[i]t is the law of this State that nonconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the [zoning] ordinance.'" Costa v. Callahan, 41 A.D.3d 1111, 1113, (3rd Dept 2007), citing Matter of Rudolf Steiner Fellowship v. De Luccia, 90 N.Y.2d 453, 463 (1997); and

WHEREAS, the Appellant asserts that a statute is to be applied prospectively and not retrospectively unless provided for otherwise, citing to Town of Islip v. Caviglia, 73 N.Y.2d 544 (1989) and thus the continuity requirement set forth at ZR § 52-61 is not applicable to a use established prior to the December 15, 1961 adoption of the ZR; and

WHEREAS, the Board does not find the cited principle in Costa to be at odds with ZR § 52-11 which states that a non-conforming use may be continued *except as otherwise provided* in Article V, Chapter 2 of the ZR because the ZR is clear that non-conforming uses may continue notwithstanding contrary zoning provisions with the condition that they are not discontinued for periods of two years or longer; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-61 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject signs) have been able to remain so long as they were (1) lawful on December 15, 1961 (ZR § 12-10) and (2) have remained in continuous use (ZR § 52-61); and

WHEREAS, the Board notes that the adoption of the 1961 ZR did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses may exist in

derogation of the ZR, but only if the continuance requirement is satisfied; and

WHEREAS, the Appellant asserts that DOB has been inconsistent with its own position and the court's in Yung Brothers, which states that "the pre-existing use within the context of zoning is to be evaluated solely on whether the use offends the regulations which were in effect at the time of the use"; and

WHEREAS, the Board finds that the Appellant's reliance on the decision in Yung Brothers is misplaced as the court did not make an ultimate finding on the matter or the relevant law; rather, as the court was faced with a motion for a Preliminary Injunction, it merely considered whether the Appellant's arguments had a likelihood of success on the merits; the court ordered the Appellant to effectuate a transfer of the matter to the Appellate Division for a review of the merits of the case, which has not yet been effectuated and thus, there has been no resolution of the matter; and

WHEREAS, the Board has reviewed the submissions in Yung Brothers and has found that DOB maintains its position that a non-conforming use can be lost if it discontinues and that the burden is on the party claiming non-conforming use status to establish such; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board states that per the Court of Appeals, municipalities may adopt laws regarding previously existing non-conforming uses. 550 Halstead Corp. v. Zoning Bd. of Appeals, 1 N.Y.3d 561, 562 (2003); Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, moreover, the Board notes that numerous New York State courts, including the Court of Appeals, have found that a defense of prior non-conforming use is an affirmative one that the property owner bears the burden of proving, See Town of Ithaca v. Hull, 174 A.D.2d 911 (3d Dep't 1991); Syracuse Aggregate Corp. v. Weise, 51 N.Y.2d 278, 284-5 (1980) citing 8A Eugene McQuillin, Municipal Corporations § 25.180 (3d ed. 1994); Quade v. Zoning Bd. of Appeals, 248 A.D.2d 386 (2d Dep't 1998); Mohan v. Zoning Bd. of Appeals, 1 A.D.3d 364 (2d Dep't 2003); and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp. v. Linden (30 N.Y.2d 160, 331 N.Y.S.2d 397 (1972)), the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, the Board agrees with the Appellant that the ZR expressly permits the continuation of non-conforming uses under certain conditions and does not find that the requirement to establish the commencement of the use prior to the adoption of the 1961 ZR or the continuation of the use from 1961 to the present to be in conflict with the property owner's rights or the intent of the ZR or relevant case law; and

WHEREAS, lastly, the Board notes that ZR § 52-61 is not contrary to ZR §52-11, which states that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2]" because the Board notes that nonconforming uses are protected by ZR Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, as to the appropriate standard, the Board concludes that DOB is correct in applying ZR § 52-61's continuity requirement to the subject signs; and

WHEREAS, thus, the Board notes that the standard to apply to the subject signs is (1) the signs existed lawfully as of December 15, 1961, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61. See also Toys "R" Us, 89 N.Y.2d 411; and

THE APPELLANT'S EVIDENCE OF CONTINUOUS USE

WHEREAS, since the Board has determined that the continuity requirement of ZR § 52-61 does apply, the Appellant asserts, in the alternate, that DOB erred in denying its request to recognize the signs as legal non-conforming signs because all four signs have been (1) lawfully established and (2) continuously in existence since at least 1939; and

WHEREAS, in support of its assertion that the signs were lawfully established prior to December 15, 1961 and have been in continuous use to the present, the Appellant has submitted the following evidence and analysis; and

- South Wall

WHEREAS, the Appellant submitted the following evidence to establish a non-conforming use prior to December 15, 1961: a photograph of a Trommer's Beer sign it estimates to be dated from between 1939 and 1940, which DOB acknowledges as being from that period; and

WHEREAS, the Appellant submitted photographs and leases as primary evidence to establish continuity of use since December 15, 1961; and

WHEREAS, for the south wall, the Appellant submitted the following three photographs: (1) a 2006 photograph of a faded Midas Muffler sign, which the Appellant estimates was installed and existed sometime between the 1960s and 1970s; (2) a photograph of a Marlboro Lights sign, which the Appellant estimates to be dated sometime between 1985 and 1998; and (3) a photograph of National Bible and Unlimit'D signs, which the Appellant represents is dated 2009; and

WHEREAS, the Appellant asserts that a small corner of a sign above the faded Midas Muffler sign in the 2006 photograph depicts a sign that is different than the Marlboro Lights sign, but it is indecipherable; and

WHEREAS, the Appellant also submitted copies of leases from 1971, 1978, 1990, 1994, and 1999 for the south wall; and

- North Wall

WHEREAS, the Appellant submitted the following evidence to establish a non-conforming use prior to December 15, 1961: a photograph of a Chas H. Fletcher Castoria sign,

which the Queens Historical Society has certified dates from prior to 1938; and

WHEREAS, DOB initially determined that there was not evidence to establish the lawfulness or establishment of the north wall sign, but during the hearing process, the Appellant discovered the Fletcher photograph and DOB now accepts the signs on the north and south walls as being lawfully established prior to December 15, 1961; and

WHEREAS, for the north wall, the Appellant submitted the following four photographs: (1) a photograph of Newport Cigarettes and Miller Time signs, which the Appellant estimates dates from sometime between 1972 and the 1980s; (2) a photograph of two indecipherable signs, which was taken by the New York City Department of Taxation in 1984, which the Appellant asserts look different than the Newport and Miller Time signs; (3) a Marlboro sign, which the Appellant estimates dates from sometime between 1985 and 1998; and (4) a photograph of Bank of America and ESPN signs, which the Appellant represents is dated 2009; and

WHEREAS, the Appellant submitted copies of companion leases to the south wall signs' leases; and

WHEREAS, to fill in gaps from 1942 to the present for both walls, the Appellant submitted affidavits and testimony from several people familiar with the site; the affidavits are from (1) a resident of the building which states that she has resided at the site since her birth in 1942 and she has seen signs at the site from 1950 to the present; (2) the owners of Fender Menders, an auto body repair shop at 27-16 21st Street adjacent to the north wall and involved with the repair business since 1951 and also owners of 27-28 21st Street, adjacent to the south wall who attest that there were billboards on both walls from 1951 through the present, and state that they have received compensation for allowing billboard companies access to the roof of his business to perform maintenance and/or repairs to the billboards; and (3) the current owner of the subject building who purchased it in 1993 and states that the[billboards date back to at least 1960 since he saw leases demonstrating such in the office of the current lessee, but is unable to obtain those prior leases and/or photographs; and

DOB'S ARGUMENTS

- The ZR requires lawful establishment and existence prior to the 1961 zoning change and continuity

WHEREAS, DOB follows the definition of non-conforming to include the requirement that the use was lawful at its commencement and that uses which were not established lawfully are not *non-conforming* uses per the ZR; and

WHEREAS, as noted, DOB has accepted that the north and south wall signs appear to have been installed lawfully sometime prior to 1940, but there was insufficient proof that the signs were entitled to protection as non-conforming uses because continuous use had not been established; and

WHEREAS, DOB notes that it generally requires evidence that the sign was lawfully established and in existence on December 15, 1961, rather than 20 years before, in order to be established as non-conforming but since the Borough Commissioner accepted the Trommer's Beer photograph to the Appellant's benefit as lawful establishment and lawful existence on December 15, 1961, DOB made the same determination for the Chas H. Fletcher Castoria sign on the north wall; and

WHEREAS, DOB accepts that the signs were lawful when established because they were established pursuant to the 1938 Building Code, which did not require permits for the signs reflected in the photographs; and

WHEREAS, DOB cites to ZR § 52-61 for the requirement that "[i]f for a continuous period of two years . . . the active operation of substantially all the non-conforming uses in any building or other structure is discontinued such land or building or other structure shall thereafter be used only for a conforming use" and to ZR § 52-81, which provides "[a] non-conforming sign shall be subject to all the provisions of [Article V] relating to non-conforming uses . . ."; and

WHEREAS, DOB cites to ZR § 51-00 (*Statement of Legislative Intent, Purpose of Regulations Governing Non-Conforming Uses and Non-Complying Buildings*) for the principle that non-conforming uses are disfavored under the ZR and public policy demands strict control and the ultimate elimination of such uses; and

WHEREAS, in furtherance of this principle, DOB requires that a party seeking non-conforming use protection (1) prove that a use was lawfully established and (2) provide sufficient evidence to support that such use was not discontinued for two or more years since becoming non-conforming; and

WHEREAS, DOB asserts that the Appellant is incorrect in statements about whether the text of ZR § 52-61, which sets forth the continuous use standard, may appropriately be applied to a use that was established prior to 1961; and

WHEREAS, specifically, DOB states that the prohibition on a two-year discontinuance is applicable since the signs became non-conforming on December 15, 1961; and

- The evidence of continuity fails to satisfy the standard set forth at DOB Technical Policy and Procedure Notice 14/1988

WHEREAS, DOB asserts that the signs became non-conforming on December 15, 1961 and thus have been subject to the continuity requirement established by ZR Article V since that date; and

WHEREAS, DOB issued TPPN 14/1988 to establish guidelines for DOB's review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that the Appellant has not provided any relevant records from any city agency (Item (a) evidence), including permits from DOB; DOB notes that the only DOB record was evidence that sign applications were filed and disapproved in 1996 to "install wall sign"; DOB questions whether the noted permit application and denial in fact suggest that a new sign was to be installed since changing copy may not have required a permit and the applications were not filed to legalize existing signs; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) were submitted even though the signs are illuminated and would have had associated electric bills; and

WHEREAS, as to the photographs, DOB accepts the following from the following dates: (south wall) (1) 1930s (Trommer's Beer and Chas. H. Fletcher), (2) the late 1980s or early 1990s (red and yellow Marlboro Lights and Fender Menders), and (3) 2009 (National Bible and Unlimit'D Boost Mobile); and

WHEREAS, DOB notes that there are no photos from the 1940s, 1950s, 1960s or 1970s, and only four photographs total from the 1980s, 1990s, and 2000s; and

WHEREAS, DOB notes that the absence of photographs is not covered by the other Item (c) evidence which includes leases covering 1971-1977 and 1990-2015, which creates an inference that the signs were discontinued sometime after 1940, not resumed until 1971, and possibly abandoned for more than two years from the 1970s to the present; and

WHEREAS, as to the north wall, DOB states that there is no evidence that the sign existed between 1961 and 1971 as there are not any photographs, utility bills or city records of any kind from that time period; and

WHEREAS, DOB notes that the Miller Time, Newport, and Fender Menders photographs demonstrate that, at most, there were signs on the north wall for an indeterminate period of time in the 1970s and 1980s; the only photograph from the 1990s (or possibly 1980s, according to the Appellant) is the one depicting a Marlboro sign and no photographs are submitted for any years thereafter until the 2009 ESPN and Bank of America signs; and

WHEREAS, DOB notes that there are no utility bills or city records of any kind for the 1980s, 1990s, and 2000s other than a disapproved DOB sign permit application; and

WHEREAS, as to leases, DOB states that they are given limited weight since they may at most reflect a right to occupy a space, but do not reflect actual occupancy; and

WHEREAS, DOB has determined that there are significant gaps in the evidence for the north wall, particularly from 1961 to 1971 and, thus, DOB's position is that the north wall signs were discontinued and cannot be resumed; similarly, the lack of evidence for the period of 1961 to 1971 for the south wall prohibits a finding of continuous use there; and

WHEREAS, as to affidavits (Item (d) evidence), DOB notes that (1) one is from an owner who purchased the building in 1993 and is of limited evidentiary value because it is self-serving and does not address in any reliable way the issue of continuity prior to 1993, (2) one is from a woman who claims to have resided at the site since 1942 and does not provide details and which may be biased given a potential disincentive to provide information that would harm the building's owner, and (3) two affidavits from principals in Fender Menders, an auto body shop adjacent to the site, which DOB finds may be biased given that they have been compensated for allowing billboard companies access to their roof; and

WHEREAS, DOB states that it does not rely on potentially biased sworn statements in lieu of objectively verifiable evidence in instances where there is not sufficient evidence or a satisfactory explanation of the lack of evidence as required by the TPPN; and

WHEREAS, DOB states that the prior building owners were charged with the knowledge of ZR § 52-61 and the current owner should have performed due diligence to determine wither sufficient evidence existed to demonstrate that the signs were compliant with ZR § 52-61; and

WHEREAS, DOB also cites to the Board's decision in a non-conforming use case at BSA Cal. No. 1-10-A (527 East 86th Street, Brooklyn) in which the Board affirmed DOB's decision that the property owner failed to submit "substantial evidence" of the use and considered (1) the quality and quantity of the evidence, (2) the specificity of the testimony, and (3) whether there was any evidence to support the testimony; and

WHEREAS, DOB has determined that the evidence is insufficient as it is lacking in quantity and quality and fails to provide specificity regarding a continuous timeline and notes that, in sum, the Appellant provides three or four photographs and several lease agreements to prove more than 50 years of continuous use; and

WHEREAS, DOB states that it examines evidence submitted to prove the existence and continuity of non-conforming signs in accordance with the TPPN, which provides a list of the kinds of proof that are commonly submitted and that forms of evidence not described in the TPPN are accepted and are given due consideration and weight depending on the nature of the evidence; and

WHEREAS, for example, DOB states that a sign permit is given substantial weight and where no permit exists, the burden lies with the owner to provide evidence that demonstrates (1) lawful establishment, (2) lawfulness when the ZR made the use non-conforming, and (3) no discontinuance for a period of two or more years; and

WHEREAS, as to the weight of evidence, DOB states that it considers government records, recorded documents, utility bills, and photographs as high-value evidence and if, for example, two photographs taken more than two years apart reflected the same sign, DOB would conclude that the sign existed for the entire period; and

WHEREAS, DOB considers uncorroborated testimonial evidence that a sign existed as insufficient since testimony may be tainted by memory lapses, bias, and misperception; similarly, leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they may not be reliable and they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB states that items of evidence are examined for their individual and collective probative value; and

APPELLANT'S RESPONSE TO THE TPPN CRITERIA

WHEREAS, the Appellant asserts that the TPPN is not an applicable guideline for advertising signs; and

WHEREAS, specifically, the Appellant asserts that Items (a), (b), and (c) do not describe evidence that is relevant to signs; and

WHEREAS, however, the Appellant asserts that if the Board finds that the TPPN is applicable to the signs, it should

find that the Appellant has satisfied the burden; and

WHEREAS, specifically, the Appellant asserts that there are not any City records except evidence that the tenant-affiant has lived in the building since 1942 and the records showing ownership of the adjacent properties for Item (a); and

WHEREAS, as to Item (b), the Appellant asserts that there are not any utility bills since ConEd does not maintain records prior to 2005; the Appellant asserts that ConEd's confirmation that records are not kept for longer than six years explains the inability to provide information that is required to allow for the introduction of affidavits under Item (d); and

WHEREAS, as to Item (c), the Appellant asserts that it has provided leases, proof of payment, and photographs to establish continuous use; and

WHEREAS, as to Item (d), the Appellant asserts that DOB must accept affidavits since it has an explanation for not having evidence in the other categories; and

CONCLUSION

WHEREAS, the Board supports DOB's determination that the Appellant has not met the burden of establishing that the signs have been in continuous use, without any two-year interruption since 1961; and

WHEREAS, the Board finds the Appellant's evidence to be insufficient primarily because (1) the ranges of dates of photographs proffered through outside information, do not establish an actual date and no gap can be covered by the same sign as in DOB's example of two photographs of the same sign over a span of time, which can lead to the conclusion that the sign existed during that span; (2) the leases do not establish the actual use of the sign; (3) the affidavits do not provide substantial enough detail to be relied upon; and (4) DOB appropriately applies the TPPN in the absence of a guideline designed specifically for signs; and

WHEREAS, as to the gaps in time, the Board states that it cannot ignore the gaps of time not covered by evidence, including 1961 to 1971 and the 1980s; and

WHEREAS, the Board notes that the Appellant provided a total of three decipherable photographs for each wall, which span the 50-year period of 1961 to the present; that is less than one photograph per decade; and

WHEREAS, the Board agrees with DOB that there are significant gaps in the evidence and cannot accept a single photograph with a range of dates amounting to ten years or more as establishing that the use has been continuous for that period; and

WHEREAS, the Board cannot accept the owner's statements that he has seen additional evidence of the signs' history, which he is unable to provide into the record; and

WHEREAS, in the absence of any other records issued by independent sources such as the City or utility companies that establish actual use, the Board is not persuaded by the Appellant's arguments to give significant weight to the leases; the Board notes that currently there are not any signs on the walls, but there are leases for the period of 2009 to 2015 in effect; this supports the assertion that there is a distinction between someone having the right to occupy the space with the sign, but not exercising the right, which may have been even more likely during periods when the sign rental was only $125 per year and the loss to owner or lessee would not have been significant if a sign were not installed; and

WHEREAS, however, even if the Board were to accept the leases, it notes that there is neither a lease nor a dated photograph for either wall in the period of 1961 to 1971 and 1982 to 1990; and

WHEREAS, as to the affidavits, although the Board did not find any reason to discredit the testimony, the Board notes that the testimony failed to establish a timeline of continuous use from prior to December 15, 1961 and lacked specificity; and

WHEREAS, as to the TPPN, the Board agrees that it is a reasonable exercise of DOB's authority to establish guidelines and that DOB it is appropriate for DOB to refer to those guidelines in a sign case; and

WHEREAS, the Board has considered the criteria for establishing substantial evidence including (1) the quality and quantity of the evidence, (2) the specificity of the testimony, and (3) whether there is any evidence to support the testimony; and

WHEREAS, the Board finds that the quality of the evidence is insufficient to establish the required criteria because it lacks critical specificity regarding a continuous timeline; and

WHEREAS, as to the lawful establishment, the Board finds that the standard is even stricter than what is set forth at DOB's reconsideration and that the Appellant should have not only established that the signs were lawful prior to 1961, but that the use existed lawfully on December 15, 1961, which the Appellant has not done; and

WHEREAS, the Board finds that DOB's acceptance of the 1930s evidence for all signs as acceptance of a lawful use on December 15, 1961 works in the Appellant's favor as it is more permissive than the requirement described at ZR § 12-10; and

WHEREAS, the Appellant makes supplemental arguments that DOB has not been responsive to its and the Board's requests and therefore concedes to certain points not rebutted and that the Appellant has been prejudiced by the submission schedule; and

WHEREAS, the Board does not agree that DOB concedes to any points that it does not rebut and notes that the Board closes the hearing when it is satisfied that all necessary information has been introduced into the record; and

WHEREAS, the Board notes that it sets the schedule for submissions and allowed the Appellant the final submission, so the Appellant has not been prejudiced by a change in the submission schedule prior to the final hearing; and

WHEREAS, in sum, the Board concludes as follows: the Appellant has not established that the signs have been in continuous use since December 15, 1961 thus, the signs do not meet the criteria required for continuing such use within the subject zoning district and must cease; and

Therefore it is Resolved that this appeal, which challenges a Final Determination issued on February 14, 2011 is denied.

Adopted by the Board of Standards and Appeals, August 16, 2011.

137-10-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.
SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.
PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Joseph A. Sherry.
For Administration: Anthony Scaduto, Fire Department.
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 July 27, 2010, acting on Department of Buildings Application No. 420140519, reads in pertinent part:

> A1 – The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, this is an application to permit the proposed construction of a detached single-family home not fronting on a legally mapped street, contrary to General City Law ("GCL") § 36; and

WHEREAS, a companion application appealing the Fire Department's denial of a variance and requesting a waiver of the sprinkler requirement of Fire Code ("FC") § 503.8.2, filed under BSA Cal. No. 62-11-A (the "Companion Appeal"), was heard concurrently and decided on the same date; and

WHEREAS, a separate application to permit the construction of a proposed home at 115 Beach 216th Street not fronting on a legally mapped street pursuant to GCL § 36, filed under BSA Cal. No. 185-10-A (and with a companion application appealing the Fire Department's denial of an identical variance requesting a waiver of the sprinkler requirement of FC § 503.8.2, filed under BSA Cal. No. 63-11-A), was also heard concurrently and decided on the same date; 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 June 21, 2011, and then to decision on August 16, 2011; and

WHEREAS, as discussed in the Companion Appeal, the Fire Department, by letters dated December 20, 2010 and April 18, 2011, has determined that the subject street does not provide the minimum width of 38'-0" as set forth in FC § 503.8.2, and therefore a sprinkler system is required to be installed throughout the proposed home; and

WHEREAS, as further discussed in the Board's decision denying the Companion Appeal, the Board agrees with the Fire Department that the applicant did not provide compelling evidence in support of a waiver of FC § 503.8.2, and therefore a sprinkler system must be installed in the proposed home; and

WHEREAS, however, the Board finds that the subject application pursuant to GCL § 36 is merited, provided that a sprinkler system is provided throughout the subject home in accordance with the Companion Appeal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated July 27, 2010, acting on Department of Buildings Application No. 420140519 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 5, 2010 – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the entire building shall be fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 and Reference Standard 17-2B of the Building Code;

THAT no building permits shall be issued for plans that do not reflect the sprinklering of the entire building;

THAT no certificate of occupancy shall be issued until the entire building is fully sprinklered;

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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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, August 16, 2011.

185-10-A
APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.
PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Joseph A. Sherry.
For Administration: Anthony Scaduto, Fire Department.
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 September 13, 2010, acting on Department of Buildings Application No. 420192375, reads in pertinent part:

> A1 – The site and building is not fronting on an official mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, this is an application to permit the proposed construction of a detached single-family home not fronting on a legally mapped street, contrary to General City Law ("GCL") § 36; and

WHEREAS, a companion application appealing the Fire Department's denial of a variance and requesting a waiver of the sprinkler requirement of Fire Code ("FC") § 503.8.2, filed under BSA Cal. No. 63-11-A (the "Companion Appeal"), was heard concurrently and decided on the same date; and

WHEREAS, a separate application to permit the construction of a proposed home at 103 Beach 217th Street not fronting on a legally mapped street pursuant to GCL § 36, filed under BSA Cal. No. 137-10-A (and with a companion application appealing the Fire Department's denial of an identical variance requesting a waiver of the sprinkler requirement of FC § 503.8.2, filed under BSA Cal. No. 62-11-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in the *City Record*, with continued a hearing on June 21, 2011, and then to decision on August 16, 2011; and

WHEREAS, as discussed in the Companion Appeal, the Fire Department, by letters dated December 20, 2010 and April 18, 2011, has determined that the subject street does not provide the minimum width of 38'-0" as set forth in FC § 503.8.2, and therefore a sprinkler system is required to be installed throughout the proposed home; and

WHEREAS, as further discussed in the Board's decision denying the Companion Appeal, the Board agrees with the Fire Department that the applicant did not provide compelling evidence in support of a waiver of FC § 503.8.2, and therefore a sprinkler system must be installed in the proposed home; and

WHEREAS, however, the Board finds that the subject application pursuant to GCL § 36 is merited, provided that a sprinkler system is provided throughout the subject home in accordance with the Companion Appeal; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated September 13, 2010, acting on Department of Buildings Application No. 420192375 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 24, 2010 – one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the entire building shall be fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 and Reference Standard 17-2B of the Building Code;

THAT no building permits shall be issued for plans that do not reflect the sprinklering of the entire building;

THAT no certificate of occupancy shall be issued until the entire building is fully sprinklered;

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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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, August 16, 2011.

229-10-BZY
APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.
SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

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 April 12, 2011, after due notice by publication in *The City Record*, with continued hearings on June 21, 2011 and July 19, 2011, and then to decision on August 16, 2011; and

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

WHEREAS, a representative of the East Village Community Coalition provided oral and written testimony in opposition to this application (the "Opposition"), citing concerns that the foundation was not completed as of the date the subject site was rezoned; and

WHEREAS, the subject site is a through-block site with frontages on Orchard Street and Allen Street, between Stanton Street and Rivington Street; and

WHEREAS, the site has a width of 26'-6" and a depth of 87'-6", and a total lot area of approximately 2,319 sq. ft.; and

WHEREAS, the site is proposed to be developed with an 11-story transient hotel (Use Group 5) building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of approximately 13,911 sq. ft. (5.99 FAR), a street wall height of 22'-0", and a building height of 132-0"; and

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

WHEREAS, on July 8, 2008, New Building Permit No. 104762570-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building, and work commenced on July 28, 2008; and

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

WHEREAS, the applicant represents that the Building complies with the former C6-1 zoning district parameters; specifically, the proposed 5.99 FAR, street wall height of 22'-0" and building height of 132'-0" were permitted; and

WHEREAS, however, because the site is now within a C4-4A zoning district, the Building would not comply with the maximum FAR of 4.0, the minimum street wall height of 40'-0", or the maximum total building height of 80'-0"; and

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

WHEREAS, on April 21, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 307-08-BZY, pursuant to ZR § 11-331,and

WHEREAS, as to the Opposition's concerns that the foundation for the Building was not completed as of the Enactment Date, the Board notes that its grant pursuant to ZR § 11-331 gave the applicant a six-month extension of time to complete construction of the foundation; and

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

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

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

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

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

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

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a

building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the Board finds that, as discussed in the initial vesting determination under BSA Cal. No. 307-08-BZY, the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the original two-year term for construction; and

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

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

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

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

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

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

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts, invoices, copies of cancelled checks, and construction tables; 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 $816,000; and

WHEREAS, as noted above, the applicant has submitted construction contracts, invoices and copies of cancelled checks evidencing payments made by the applicant; and

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

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

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

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

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104762570-01-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 August 16, 2013.

Adopted by the Board of Standards and Appeals, August 16, 2011.

62-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O'Brien, lessees.
SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.
PREMISES AFFECTED – 103 Beach 217th Street, east side of Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q
APPEARANCES –
For Applicant: Joseph A. Sherry.
For Opposition: Anthony Scaduto, Fire Department.
ACTION OF THE BOARD – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Operations, dated December 20, 2010 (and re-affirmed by letter dated April 18, 2011) (the "Final Determination"), issued in response to a variance application before the Fire Department, seeking to modify the sprinkler requirement of Fire Code (FC) § 503.8.2; and

WHEREAS, the Final Determination reads in pertinent part:

> FC 503.8.2 requires that buildings on a public street with an unobstructed width of [less than] 38 feet be protected throughout by a sprinkler system…
>
> In the absence of any showing of impracticability, and given that the public streets serving the

proposed development are far narrower than the 38' required by the Fire Code, the Fire Department has determined that there is no grounds for granting a modification (variance) of the sprinklering requirement of FC 503.8.2, and has denied an application for a modification; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of the sprinkler requirement of FC § 503.8.2 for the construction of a single-family home on a street with a width of less than 38'-0"; and

WHEREAS, a companion application to permit the construction of the proposed home not fronting on a legally mapped street pursuant to General City Law ("GCL") § 36, filed under BSA Cal. No. 137-10-A, was heard concurrently and decided on the same date; and

WHEREAS, a separate appeal challenging the Fire Department's denial of an identical variance at 115 Beach 216th Street, filed under BSA Cal. No. 63-11-A (and with a companion application for a waiver of GCL § 36, filed under BSA Cal. No. 185-10-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this appeal on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

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

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the east side of Beach 217th Street, 40 feet south of Breezy Point Boulevard, within an R4 zoning district; and

WHEREAS, the appellant proposes to construct a non-sprinklered two-story single-family home on the site; and

WHEREAS, Beach 217th Street has an asphalt roadbed with sand areas that border each side of the asphalt portion of the street and sidewalks that border the sand areas; and

WHEREAS, the appellant submitted a survey reflecting that the asphalt portion of Beach 217th Street has a width of approximately 31'-2" 1, and the curb-to-curb width of the street is approximately 37'-11" (inclusive of the sand areas which have an approximate width of 2'-9" along the west side and 4'-0" along the east side); and

WHEREAS, prior to filing the subject appeal, the appellant submitted a variance application to the Fire Department requesting a waiver of FC § 503.8.2, which requires that "[e]xcept as otherwise approved, buildings on public streets that have an unobstructed width of less than 38 feet (11 582 mm) shall be protected throughout by a sprinkler system;" and

WHEREAS, subsequently, the Fire Department issued the Final Determination denying the appellant's variance application; and

WHEREAS, the appellant requests that the Board grant the subject appeal and waive the sprinkler requirement of FC § 503.8.2 based on the following: (1) the difference between the width of the subject street and the minimum width required under FC § 503.8.2 is de minimis; (2) the expense associated with installing a sprinkler system in the proposed home is a financial hardship which constitutes a practical difficulty in complying with FC § 503.8.2; (3) the Fire Department has granted similar variances in the past; (4) there are alternative fire safety measures in place at the site which render strict compliance with FC § 503.8.2 unnecessary; and (5) FC § 503.2.1.2 permits fire apparatus access roads with a minimum width of only 30'-0"; and

WHEREAS, the Fire Department has the following primary arguments in response: (1) the subject street has an unobstructed width of only 30'-0"; (2) the unpaved sand areas on either side of the street cannot be utilized for fire apparatus access because they are not an approved surface; (3) even if the unpaved sand areas could be utilized for fire apparatus access, the width of the subject street would still be substandard at approximately 37'-11", rather than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and (4) the installation of sprinklers is not an unduly burdensome expenditure; and

WHEREAS, as to the width of the street, the appellant argues that the sand areas that run along both sides of the 31'-2" wide asphalt roadway are capable of withstanding the load imposed by the Fire Department fire apparatus and therefore should be included in measuring the width of the subject street; and

WHEREAS, accordingly, the appellant contends that the width of the subject street should be considered approximately 37'-11" rather than 31'-2" because of the additional 6'-9" of width provided by the sand areas; and

WHEREAS, the appellant further contends that, including the sand areas, the difference between the width of the subject street of 37'-11" and the minimum required width of 38'-0" is de minimis, and therefore a waiver of FC § 503.8.2 is justified; and

WHEREAS, the Fire Department argues that the sand areas cannot be included in calculating the width of the subject street because they are not capable of supporting the weight of fire apparatus and they are not an approved driving surface under FC § 503.1.1; and

WHEREAS, at hearing, the Board requested that the appellant provide a report from an engineer in support of its claims regarding the ability of the sand areas to support the fire apparatus; and

WHEREAS, in response, the appellant submitted a letter from an engineer stating that, based on a visual inspection, the soil located within the sand area is dense sand having a load capacity of six tons, and therefore is capable of withstanding the load imposed by the Fire Department fire apparatus; and

WHEREAS, the Fire Department states that the evidence submitted by the appellant applies to soils related to foundation

1 The survey submitted by the appellant indicates that the asphalt portion of the street has a width of 31'-2", while the Fire Department states that it measured the width of the asphalt portion of the street at 30'-0". The Board notes that this discrepancy has no effect on the outcome of the subject appeal.

systems and is not relevant to road surface materials exposed to the elements and the mechanical effects of vehicles and equipment; therefore the engineer's letter is not sufficient to establish that the sand areas are capable of supporting the weight of its fire apparatus; and

WHEREAS, the Fire Department further states that, pursuant to FC § 503.1.1 the subject street must have a surface composed of asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation ("DOT"); and

WHEREAS, the Fire Department submitted DOT's 2009 Street Design Manual as evidence that the subject sand areas are not an approved driving surface; and

WHEREAS, accordingly, the Fire Department states that the sand areas cannot be included in measuring the unobstructed width of the street; therefore, the subject street has an approximate width of only 30'-0", which is far narrower than the minimum required width of 38'-0"; and

WHEREAS, as to the expense associated with the installation of sprinklers, the appellant represents that the cost to sprinkler the proposed home would be approximately $20,000; and

WHEREAS, the appellant states that the expense of installing sprinklers at the site is the result of several factors, specifically, that there are no eight-inch city water mains in front of the site and the average private water lines are between two inches and four inches, and therefore the installation of a sprinkler system will require specially designed plans, a special construction engineer for design and inspection, and a new tap into the private water line in front of the site; and

WHEREAS, in response, the Fire Department argues that sprinklering a newly-constructed single-family home is an investment in fire safety, not an unnecessary or unduly burdensome expenditure; and

WHEREAS, the Fire Department further states that the Building Code provides simplified design standards for sprinkler systems in such occupancies, and the design standards only mandate water flow from a limited number of sprinkler heads over a brief amount of time and allow for use of the domestic water supply; and

WHEREAS, the appellant argues that the Fire Department recently granted a variance application for a property located at 109 Beach 217th Street, which had the same street conditions as the subject site; and

WHEREAS, in response, the Fire Department concedes that a similar variance application was granted for 109 Beach 217th Street, but states that the application was granted in error and that other similar applications have since been required to provide a sprinkler system in compliance with FC § 503.8.2; and

WHEREAS, as to the alternative methods of fire prevention, the appellant states that (1) the Breezy Point community has a private fire department which has four-wheel drive vehicles capable of accessing the site, (2) there is a 15'-0" wide sand fire lane located along the rear of the site to provide an alternate means of access, and (3) the proposed home will provide interconnected smoke alarms and will be constructed of one-hour fire-rated material; and

WHEREAS, in support of these alternative fire safety measures, the appellant submitted a letter from the Point Breeze Fire Department stating that it is a private fire house serving the community of Breezy Point and describing its two four-wheel drive fire vehicles; and

WHEREAS, the appellant also submitted photographs of the four-wheel drive fire vehicles as well as the 15'-0" wide sand fire lane located along the rear of the site; and

WHEREAS, in response, the Fire Department states that the alternative fire prevention measures cited by the appellant do not alleviate the site's non-compliance with FC § 503.8.2; and

WHEREAS, the appellant contends that the subject street width should be considered acceptable because a minimum width of 30'-0" is permitted under FC § 503.2.1.2; and

WHEREAS, the Board notes that FC § 503.2.1.2 permits a fire apparatus access road with a minimum width of 30'-0" as an exception to the general requirement that such roads have a minimum width of 38'-0" only upon the satisfaction of the requirements of ZR § 119-214; and

WHEREAS, the Board further notes that ZR § 119-214 only applies to sites within the Special Hillsides Preservation District, which does not include the subject site; therefore, the subject site does not qualify for the exception provided in FC § 503.2.1.2; and

WHEREAS, based upon the above, the Board agrees with the Fire Department that the sand areas should not be included in measuring the width of the subject street, and therefore the unobstructed width of the street is no more than 31'-2", which is significantly narrower than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and

WHEREAS, specifically, the Board agrees with the Fire Department that the sand areas are not approved driving surfaces under FC § 503.1.1, and the engineer's letter submitted by the appellant, which consists of an informal visual analysis of the soil located in the sand areas, is not sufficient to establish that the soil at this location is capable of withstanding the load of the fire apparatus; and

WHEREAS, further, the Board notes that even if it accepted the width of the subject street as 37'-11", the width would still not comply with FC § 503.8.2, and the fact that the non-compliance would be minor in nature does not, in and of itself, justify a waiver of the Fire Code; and

WHEREAS, the Board also agrees with the Fire Department that neither the expense associated with the installation of a sprinkler system nor the alternative methods of fire prevention at the site justify the requested waiver of the sprinkler requirement of FC § 503.8.2; and

WHEREAS, accordingly, based on the evidence in the record, the Board concurs with the Fire Department that the subject street does not provide a minimum width of 38'-0", as set forth in FC § 503.8.2, and the appellant has failed to provide any compelling argument or evidence as a basis for waiving the Fire Code.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated December 20, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals,

August 16, 2011.

63-11-A

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

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

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

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Operations, dated December 20, 2010 (and re-affirmed by letter dated April 18, 2011) (the "Final Determination"), issued in response to a variance application before the Fire Department, seeking to modify the sprinkler requirement of Fire Code (FC) § 503.8.2; and

WHEREAS, the Final Determination reads in pertinent part:

> FC 503.8.2 requires that buildings on a public street with an unobstructed width of [less than] 38 feet be protected throughout by a sprinkler system…
>
> In the absence of any showing of impracticability, and given that the public streets serving the proposed development are far narrower than the 38' required by the Fire Code, the Fire Department has determined that there is no grounds for granting a modification (variance) of the sprinklering requirement of FC 503.8.2, and has denied an application for a modification; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of the sprinkler requirement of FC § 503.8.2 for the construction of a single-family home on a street with a width of less than 38'-0"; and

WHEREAS, a companion application to permit the construction of the proposed home not fronting on a legally mapped street pursuant to General City Law ("GCL") § 36, filed under BSA Cal. No. 185-10-A, was heard concurrently and decided on the same date; and

WHEREAS, a separate appeal challenging the Fire Department's denial of an identical variance at 103 Beach 217th Street, filed under BSA Cal. No. 62-11-A (and with a companion application for a waiver of GCL § 36, filed under BSA Cal. No. 137-10-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this appeal on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

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

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the east side of Beach 216th Street, approximately 280 feet south of Breezy Point Boulevard, within an R4 zoning district; and

WHEREAS, the appellant proposes to construct a non-sprinklered two-story single-family home on the site; and

WHEREAS, Beach 216th Street has an asphalt roadbed with sand areas that border each side of the asphalt portion of the street and sidewalks that border the sand areas; and

WHEREAS, the appellant submitted a survey reflecting that the asphalt portion of Beach 216th Street has a width of approximately 31'-2" 1, and the curb-to-curb width of the street is approximately 37'-11" (inclusive of the sand areas which have an approximate width of 2'-9" along the west side and 4'-0" along the east side); and

WHEREAS, prior to filing the subject appeal, the appellant submitted a variance application to the Fire Department requesting a waiver of FC § 503.8.2, which requires that "[e]xcept as otherwise approved, buildings on public streets that have an unobstructed width of less than 38 feet (11 582 mm) shall be protected throughout by a sprinkler system;" and

WHEREAS, subsequently, the Fire Department issued the Final Determination denying the appellant's variance application; and

WHEREAS, the appellant requests that the Board grant the subject appeal and waive the sprinkler requirement of FC § 503.8.2 based on the following: (1) the difference between the width of the subject street and the minimum width required under FC § 503.8.2 is de minimis; (2) the expense associated with installing a sprinkler system in the proposed home is a financial hardship which constitutes a practical difficulty in complying with FC § 503.8.2; (3) the Fire Department has granted similar variances in the past; (4) there are alternative fire safety measures in place at the site which render strict compliance with FC § 503.8.2 unnecessary; and (5) FC § 503.2.1.2 permits fire apparatus access roads with a minimum width of only 30'-0"; and

WHEREAS, the Fire Department has the following primary arguments in response: (1) the subject street has an unobstructed width of only 30'-0"; (2) the unpaved sand areas

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1 The survey submitted by the appellant indicates that the asphalt portion of the street has a width of 31'-2", while the Fire Department states that it measured the width of the asphalt portion of the street at 30'-0". The Board notes that this discrepancy has no effect on the outcome of the subject appeal.

on either side of the street cannot be utilized for fire apparatus access because they are not an approved surface; (3) even if the unpaved sand areas could be utilized for fire apparatus access, the width of the subject street would still be substandard at approximately 37'-11", rather than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and (4) the installation of sprinklers is not an unduly burdensome expenditure; and

WHEREAS, as to the width of the street, the appellant argues that the sand areas that run along both sides of the 31'-2" wide asphalt roadway are capable of withstanding the load imposed by the Fire Department fire apparatus and therefore should be included in measuring the width of the subject street; and

WHEREAS, accordingly, the appellant contends that the width of the subject street should be considered approximately 37'-11" rather than 31'-2" because of the additional 6'-9" of width provided by the sand areas; and

WHEREAS, the appellant further contends that, including the sand areas, the difference between the width of the subject street of 37'-11" and the minimum required width of 38'-0" is de minimis, and therefore a waiver of FC § 503.8.2 is justified; and

WHEREAS, the Fire Department argues that the sand areas cannot be included in calculating the width of the subject street because they are not capable of supporting the weight of fire apparatus and they are not an approved driving surface under FC § 503.1.1; and

WHEREAS, at hearing, the Board requested that the appellant provide a report from an engineer in support of its claims regarding the ability of the sand areas to support the fire apparatus; and

WHEREAS, in response, the appellant submitted a letter from an engineer stating that, based on a visual inspection, the soil located within the sand area is dense sand having a load capacity of six tons, and therefore is capable of withstanding the load imposed by the Fire Department fire apparatus; and

WHEREAS, the Fire Department states that the evidence submitted by the appellant applies to soils related to foundation systems and is not relevant to road surface materials exposed to the elements and the mechanical effects of vehicles and equipment; therefore the engineer's letter is not sufficient to establish that the sand areas are capable of supporting the weight of its fire apparatus; and

WHEREAS, the Fire Department further states that, pursuant to FC § 503.1.1 the subject street must have a surface composed of asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation ("DOT"); and

WHEREAS, the Fire Department submitted DOT's 2009 Street Design Manual as evidence that the subject sand areas are not an approved driving surface; and

WHEREAS, accordingly, the Fire Department states that the sand areas cannot be included in measuring the unobstructed width of the street; therefore, the subject street has an approximate width of only 30'-0", which is far narrower than the minimum required width of 38'-0"; and

WHEREAS, as to the expense associated with the installation of sprinklers, the appellant represents that the cost to sprinkler the proposed home would be approximately $20,000; and

WHEREAS, the appellant states that the expense of installing sprinklers at the site is the result of several factors, specifically, that there are no eight-inch city water mains in front of the site and the average private water lines are between two inches and four inches, and therefore the installation of a sprinkler system will require specially designed plans, a special construction engineer for design and inspection, and a new tap into the private water line in front of the site; and

WHEREAS, in response, the Fire Department argues that sprinklering a newly-constructed single-family home is an investment in fire safety, not an unnecessary or unduly burdensome expenditure; and

WHEREAS, the Fire Department further states that the Building Code provides simplified design standards for sprinkler systems in such occupancies, and the design standards only mandate water flow from a limited number of sprinkler heads over a brief amount of time and allow for use of the domestic water supply; and

WHEREAS, the appellant argues that the Fire Department recently granted a variance application for a property located at 109 Beach 217th Street, which had the same street conditions as the subject site; and

WHEREAS, in response, the Fire Department concedes that a similar variance application was granted for 109 Beach 217th Street, but states that the application was granted in error and that other similar applications have since been required to provide a sprinkler system in compliance with FC § 503.8.2; and

WHEREAS, as to the alternative methods of fire prevention, the appellant states that (1) the Breezy Point community has a private fire department which has four-wheel drive vehicles capable of accessing the site, (2) there is a 15'-0" wide sand fire lane located along the rear of the site to provide an alternate means of access, and (3) the proposed home will provide interconnected smoke alarms and will be constructed of one-hour fire-rated material; and

WHEREAS, in support of these alternative fire safety measures, the appellant submitted a letter from the Point Breeze Fire Department stating that it is a private fire house serving the community of Breezy Point and describing its two four-wheel drive fire vehicles; and

WHEREAS, the appellant also submitted photographs of the four-wheel drive fire vehicles as well as the 15'-0" wide sand fire lane located along the rear of the site; and

WHEREAS, in response, the Fire Department states that the alternative fire prevention measures cited by the appellant do not alleviate the site's non-compliance with FC § 503.8.2; and

WHEREAS, the appellant contends that the subject street width should be considered acceptable because a minimum width of 30'-0" is permitted under FC § 503.2.1.2; and

WHEREAS, the Board notes that FC § 503.2.1.2 permits a fire apparatus access road with a minimum width of 30'-0" as an exception to the general requirement that such roads have a minimum width of 38'-0" only upon the satisfaction of the

requirements of ZR § 119-214; and

WHEREAS, the Board further notes that ZR § 119-214 only applies to sites within the Special Hillsides Preservation District, which does not include the subject site; therefore, the subject site does not qualify for the exception provided in FC § 503.2.1.2; and

WHEREAS, based upon the above, the Board agrees with the Fire Department that the sand areas should not be included in measuring the width of the subject street, and therefore the unobstructed width of the street is no more than 31'-2", which is significantly narrower than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and

WHEREAS, specifically, the Board agrees with the Fire Department that the sand areas are not approved driving surfaces under FC § 503.1.1, and the engineer's letter submitted by the appellant, which consists of an informal visual analysis of the soil located in the sand areas, is not sufficient to establish that the soil at this location is capable of withstanding the load of the fire apparatus; and

WHEREAS, further, the Board notes that even if it accepted the width of the subject street as 37'-11", the width would still not comply with FC § 503.8.2, and the fact that the non-compliance would be minor in nature does not, in and of itself, justify a waiver of the Fire Code; and

WHEREAS, the Board also agrees with the Fire Department that neither the expense associated with the installation of a sprinkler system nor the alternative methods of fire prevention at the site justify the requested waiver of the sprinkler requirement of FC § 503.8.2; and

WHEREAS, accordingly, based on the evidence in the record, the Board concurs with the Fire Department that the subject street does not provide a minimum width of 38'-0", as set forth in FC § 503.8.2, and the appellant has failed to provide any compelling argument or evidence as a basis for waiving the Fire Code.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated December 20, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, August 16, 2011.

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for an adjourned hearing.

224-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Incorporated, owners, John & Daniel Lynch, lessee.

SUBJECT – Application December 7, 2010 – Proposed reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36 and the building and private disposal system is located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 173 Reid Avenue, east side of Reid Avenue 245.0 north of Breezy Point Boulevard. Block 16359, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings determination to deny the issuance of a sign permit on the basis that a lawful adversting sign has not been established and not discontinued as per ZR Section 52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Caroline Harris.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

14-11-A

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

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: John Egnatos Beene.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

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 revocation of sign permits. 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
APPEARANCES –
For Applicant: Randy Mastro.
For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

77-11-A
APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.
SUBJECT – Application May 27, 2011 – Appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 zoning regulations. R6B zoning district.
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
APPEARANCES –
For Applicant: Calvin Wong.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 16, 2011
1:30 P.M.

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

ZONING CALENDAR

227-09-BZ
APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.
SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two-story commercial building, contrary to use regulations (§22-10). R6B zoning district.
PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.
COMMUNITY BOARD #4Q
APPEARANCES –
For Applicant: Sandy Anagnostov.
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 March 12, 2009, acting on Department of Buildings Application No. 410064219, reads in pertinent part:

"Proposed 2 sty commercial use is not permitted as-of-right in an R6B zoning district. This is contrary to Section 22-10 ZR;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R6B zoning district, the construction of a two-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on April 5, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 12, 2011, and then to decision on August 16, 2011; and

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

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on a triangular-shaped lot bounded by Roosevelt Avenue to the north and Spruce Avenue to the south, within an R6B zoning district; and

WHEREAS, the site has approximately 86 feet of frontage on Roosevelt Avenue and 83 feet of frontage on

Spruce Street, with a total lot area of 836 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story and cellar commercial building with retail use on the ground floor and office use on the second floor, and with a total floor area of 1,510 sq. ft. (1.80 FAR), and no parking; and

WHEREAS, commercial use is not permitted in the subject R6B zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; and

WHEREAS, the applicant states that the following is a unique physical condition which creates unnecessary hardship and practical difficulties in developing the site with a complying development: the site is an irregularly shaped, undersized, vacant corner lot; and

WHEREAS, as to the site's irregular shape, the applicant states that the site is triangularly shaped and that the depth of the site tapers from a maximum depth of approximately 20 feet along the western lot line to zero feet along the eastern lot line; and

WHEREAS, the applicant represents that the shallow, tapering depth renders the eastern portion of the site unbuildable; and

WHEREAS, the applicant further represents that the irregular shape of the site results in small floor plates with an inefficient layout and configuration which makes as-of-right residential or community facility development infeasible; and

WHEREAS, as to the site's uniqueness, the applicant submitted a study of the lots within a 400-ft. radius of the site, which reflects that there are only six other vacant lots in the study area and all of those lots are larger and more regularly shaped than the subject site; and

WHEREAS, the applicant submitted a letter from a real estate brokerage firm stating that it made multiple attempts to rent out the subject site for community facility use but was unable to find a suitable candidate due to the space constraints imposed by the subject lot; and

WHEREAS, the applicant also submitted a letter from a prospective community facility tenant stating that it reviewed the subject site and determined that the layout of the site did not provide sufficient square footage to accommodate the needs of the community facility; and

WHEREAS, based upon the above, the Board finds that the irregular shape of the site creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming three-story mixed-use building with community facility use on the first floor and a duplex apartment on the second and third floors; (2) a conforming three-story community facility building; and (3) the proposed two-story commercial building with retail space on the first floor and commercial office space on the second floor; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

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

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

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

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there are multiple commercial uses located in the surrounding area, including commercial uses on the three lots immediately adjacent to the west of the site; and

WHEREAS, the radius diagram submitted by the applicant also reflects that the block located across Roosevelt Avenue from the site has a C1-4 commercial overlay along Roosevelt Avenue, and the majority of Block 1974, located one block east of the site, is zoned with a C2-2 overlay; and

WHEREAS, the applicant states that the site is also located adjacent to the elevated train on Roosevelt Avenue and has frontage on both Roosevelt Avenue and Spruce Avenue, with commercial and mixed uses surrounding the site; and

WHEREAS, the applicant further states that the site's proximity to the elevated train on Roosevelt Avenue, in conjunction with its small, irregular shape and frontage on two streets makes the site unsuitable for residential use; and

WHEREAS, at hearing, the Board directed the applicant to (1) provide street trees along Roosevelt Avenue and Spruce Street, (2) extend the existing sidewalk and construct a new sidewalk in front of the site along Spruce Street, (3) confirm that signage on the site complies with C1 district regulations; and (4) provide a survey to show the location of manholes on the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that street trees will be planted along Roosevelt Avenue and Spruce Street, a sidewalk will be provided in front of the site along Spruce Street, and the signage complies with C1 district regulations; and

WHEREAS, the applicant also submitted a survey and photograph reflecting that the existing manhole is located outside of the subject lot; 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 finds that this proposal is the minimum necessary to afford the owner relief; and

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

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 R6B zoning district, the construction of a two-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-10; *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 August 5, 2011" – seven (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 1,510 sq. ft. (1.80 FAR), as indicated on the BSA-approved plans;

THAT signage on the site shall comply with C1 district regulations;

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, August 16, 2011.

28-11-BZ
CEQR #11-BSA-071M
APPLICANT – The Law Office of Fredrick A. Becker, for 291 Broadway Realty Associates LLC, owner; Garuda Thai Inc. dba The Wat, lessee.
SUBJECT – Application March 24, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*The Wat*). C6-4 zoning district.
PREMISES AFFECTED – 291 Broadway, northwest corner of Broadway and Reade Street, Block 150, Lot 38, Borough of Manhattan.
COMMUNITY BOARD #1M
APPEARANCES –
For Applicant: Lyra J. Altman.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated August 11, 2011, acting on Department of Buildings Application No. 120296125, reads in pertinent part:

"Legalization of the subject Physical Culture Establishment/boxing gym is contrary to ZR 32-10 and is not permitted as-of-right in a C6-4A zoning district and requires a special permit from the Board of Standards and Appeals under ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment (PCE) at the cellar of a 19-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 12, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

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

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

WHEREAS, the subject site is located on the northwest corner of Broadway and Reade Street, within a C6-4A zoning district; and

WHEREAS, the site is occupied by a 19-story commercial building; and

WHEREAS, the PCE will occupy 5,015 sq. ft. of floor space in a portion of the cellar level; and

WHEREAS, the PCE will be operated as The Wat; and

WHEREAS, the proposed hours of operation are Monday through Friday, from 7:00 a.m. to 10:00 p.m.; Saturday, from 8:00 a.m. to 4:00 p.m.; and Sunday, from 10:00 a.m. to 3:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the Board notes that the PCE has been in operation since January 1, 2011, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 1, 2011 and the date of this grant; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA071M, dated March 24, 2011; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4A zoning district, the operation of a physical culture establishment at a portion of the cellar level of a 19-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 1, 2011" – (4) sheets and *on further condition*:

THAT the term of this grant shall expire on January 1, 2021;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, August 16, 2011.

55-11-BZ
CEQR #11-BSA-088X
APPLICANT – Sheldon Lobel, P.C., for Acadia 2914 Third Avenue LLC, owner; Third Avenue Bronx Fitness Group, LLC, lessee.
SUBJECT – Application April 25, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment *(Planet Fitness)*. C4-4 zoning district.
PREMISES AFFECTED – 2914 Third Avenue, south of East 152nd Street, Third Avenue and Bergen Avenue, Block 2362, Lot 13, Borough of Bronx.
COMMUNITY BOARD #1BX
APPEARANCES –
For Applicant: Josh Rinesmith.
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Superintendent, dated March 25, 2011, acting on Department of Buildings Application No. 220104875, reads in pertinent part:

> "ZR-73-36. BSA approval required for proposed physical culture establishment in a C4-4 zoning district as per stated zoning section;" and

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

WHEREAS, a public hearing was held on this application on July 19, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

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

WHEREAS, the subject site is a through lot with frontages on Third Avenue and Bergen Avenue, between East 152nd Street and Westchester Avenue, within a C4-4 zoning district; and

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

WHEREAS, the PCE will occupy 23,522 sq. ft. of floor area on a portion of the first floor and the entire second and third floors; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are 24 hours per day, seven days a week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.11BSA088X, dated July 5, 2011; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4 zoning district, the operation of a physical culture establishment at a portion of the first floor and the entire second and third floors of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 20, 2011" – (6) sheets and *on further condition*:

THAT the term of this grant shall expire on August 16, 2021;

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, August 16, 2011.

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 and Barbara Cohen.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

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.
For Opposition: Jerome Fox.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for an adjourned hearing.

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 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

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 –
For Applicant: Eric Palatnik.
For Opposition: Jeannie Borkowski, Joanne Donnaruma, John Donnaruma and Eileen Martin.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

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.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for an adjourned hearing.

230-10-BZ
APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.
SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.
PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Eric Palatnik and Ian Rasmussen.
For Opposition: Janna Kolfman, Laura Krasner, Arielle Fox and Jerome Fox.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

4-11-BZ
APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.
SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31, and §113-561). R5 zoning district.
PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Lyra J. Altman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing

closed.

38-11-BZ
APPLICANT – Eric Palatnik, P.C., for Arveh Schimmer, owner.
SUBJECT – Application April 5, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.
PREMISES AFFECTED – 1368 East 27th Street, between Avenue M and N, Block 7662, Lot 80, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Eric Palatnik.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

48-11-BZ
APPLICANT – Richard C. Bonsignore, for Joseph Moinian, owner; Mendez Boxing New York, lessee.
SUBJECT – Application April 13, 2011– Special Permit (§73-36) to allow the operation of a physical culture establishment (Mendez Boxing). C5-2 zoning district.
PREMISES AFFECTED – 60 Madison Avenue, aka 54-60 Madison Avenue, aka 23-25 East 26th Street, aka 18-20 East 27th Street, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street. Block 856, Lot 58, Borough of Manhattan.
COMMUNITY BOARD #5M
APPEARANCES –
For Applicant: Richard C. Bonsignore.
ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for continued hearing.

51-11-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.
SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); and rear yard (§23-47) regulations. R2 zoning district.
PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #14BK
APPEARANCES –
For Applicant: Lyra A. Altman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

54-11-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.
SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.
PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.
COMMUNITY BOARD #12BK
APPEARANCES –
For Applicant: Lyra J. Altman and Jim Heineman.
For Opposition: Stefanie Fedak, Anna Cali, Stephanie Wong, Natalie DeRicola, Msg. Dan Cassato, Rebeca Gray, Virginia Bivona, Sal Cali, Lorraine Cardozo, Joseph Oliva and Vito Marinelli, and others.
ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for continued hearing.

65-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Vornado Gun Hill Road LLC, for Gun Hill Road Fitness Group, lessee.
SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) in portion of an existing one-story building. The premises is located in a C2-1/R3-2 zoning district. The proposal is contrary to Section 32-31.
PREMISES AFFECTED – 1750 East Gun Hill Road, frontage on East Gun Hill Road, Gunther Avenue, and Bergen Avenue, Block 4494, Lot 1, Borough of Bronx.
COMMUNITY BOARD #11BX
APPEARANCES –
For Applicant: Josh Rinesmith.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

68-11-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Rivkie Weingarten and Nachum Weingarten, owners.
SUBJECT – Application April 16, 2011 – Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area, lot coverage and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district.
PREMISES AFFECTED – 1636 East 23rd Street, between Avenue P and Quentin Road, Block 6785, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #15BK
APPEARANCES –
For Applicant: Lyra J. Altman.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.