# BULLETIN

**OF THE**
**NEW YORK CITY BOARD OF STANDARDS**
**AND APPEALS**

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# DIRECTORY



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**121-12-A**
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**122-12-A**
BQE & 32nd Avenue, Block 1137, Lot(s) 22, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.

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**123-12-A**
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**124-12-A**
BQE & 34th Avenue, Block 1255, Lot(s) 1, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5, M1-1 district.

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**126-12-A**
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**127-12-A**
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**128-12-A**
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# DOCKET

**129-12-A**
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**131-12-A**
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**132-12-A**
Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot(s) 230, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 (WP) district.

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**133-12-A**
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**134-12-A**
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**135-12-A**
Long Island Expressway & 74th Street, Block 2814, Lot(s) 4, Borough of **Queens, Community Board: 05**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1, M1-1, R4- district.

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**136-12-A**
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**137-12-BZ**
515-523 East 73rd Street, The north side of the premises is situated on East 74th Street 357.62 feet from the corner formed by the intersection of FDR Drive and East 74th Street and 223 feet from the corner of the intersection formed by York Avenue and East 74th Street. The south, Block 1485, Lot(s) 11, 14, 40, Borough of **Manhattan, Community Board: 08**. Variance (§72-21) requesting waivers of §§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133 to waive the rear-yard equivalent along East 73rd Street, allow community facility Use Group 4 in a 5.59 foot wide strip of the premises, waive a 20 foot setback along East 73rd Street, increase floor area ratio and increase the number of parking spaces permitted for the construction of a 13-story amulatory diagnostic and treatment health care facility. M1-4/M3-2 district.

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**138-12-BZ**
2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. One side yard was over built leaving a 2'-0' side yard where 5' is required. R5 district.

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**139-12-BZ**
34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot(s) 29, Borough of **Queens, Community Board: 01**. Proposed enlargement of existing non-conforming manufacturing building: warehouse (use group 16) and factory (use group 17) within an R5 residential zoning district is contrary to 22-00 ZR for enlargement. A special permit is required pursuant to 73-53ZR. Refer to Board of Standards and Appeals. R5 district.

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**140-12-A**
69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues., Block 6896, Lot(s) 120(tent), Borough of **Staten Island, Community Board: 03**. Appeal from decision of Borough Commissioner denying permission for proposed construction of a two family dwelling partially within the bed of a mapped street. R3X(SRD) district.

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

# CALENDAR

**MAY 15, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 15, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**849-49-BZ**
APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, Esq., for Directors of Guild of America, Inc., owner.
SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued use of a motion picture theater and other uses which expired on January 31, 2012. C5-3(MID) zoning district.
PREMISES AFFECTED – 110 West 57th Street, southside of 57th Street, between 6th and 7th Avenues, Block 1009, Lot 40, Borough of Manhattan.
**COMMUNITY BOARD #5M**

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**12-91-BZ**
APPLICANT – Rampulla Associates Architects, for Miggy's Too Delicatessen Corp., owner.
SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer's Market*) which expired on April 21, 2012; Amendment to eliminate the landscaping at the rear of the site, legalize an outdoor refrigeration unit, the elimination of the hours for garbage pickup and request to extinguish the term of the variance. R3-2 zoning district.
PREMISES AFFECTED – 2241 Victory Boulevard, north south corner of Victory Boulevard and O'Connor Avenue, Block 463, Lot 25, Borough of Staten Island.
**COMMUNITY BOARD #1SI**

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**136-01-BZ**
APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.
SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.
PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.
**COMMUNITY BOARD #2Q**

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**APPEALS CALENDAR**

**196-11-A**
APPLICANT – Bryan Cave, LLP, for Jamaica Estates Design Group LLC, owner.
SUBJECT – Application December 27, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.
PREMISES AFFECTED – 178-06 90th Avenue, southeast corner of the intersection of 90th Avenue and 178th Street, Block 9894, Lot 47, 48, 51, Borough of Queens.
**COMMUNITY BOARD #12Q**

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**MAY 15, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 15, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**192-11-BZ**
APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.
SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center contrary to §23-35 (Minimum Lot Width/Area), §25-31 (Required Parking) and §25-62 & §35-68 (Parking Lot Maneuverability). R2/LDGMA district.
PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.
**COMMUNITY BOARD #3SI**

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**20-12-BZ**
APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.
SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment in a portion of an existing one-story commercial building. C2-2\R5B zoning district - occupying 3,690 square feet on the ground floor and 20,640 square feet on the sub-cellar in an under construction mixed residential/commercial building.
PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3rd Street, northeast corner of Berry and N. 3rd Streets, Block 2351, Lot 1087, Borough of Brooklyn.
**COMMUNITY BOARD #1BK**

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**31-12-BZ**
APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.
SUBJECT – Application February 8, 2012 – Special Permit (ZR §73-50) to seek a waiver of rear yard requirements per ZR §33-292 to permit the construction of commercial building. C8-3 zoning district.
PREMISES AFFECTED – 280 West 155th Street, corner of Frederick Douglas Boulevard and West 155th Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.
**COMMUNITY BOARD #10M**

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**49-12-BZ**
APPLICANT – Sheldon Lobel, P.C., for Laterra, Inc., owner; Powerhouse Gym "FLB", Inc., lessee.
SUBJECT – Application March 2, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Powerhouse Gym*) in a portion of an existing one-story commercial building. C2-2\R5B zoning district.
PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34th Avenue, Block 6077, Lot 1, Borough of Queens.
**COMMUNITY BOARD #11Q**

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**53-12-BZ**
APPLICANT – Law Office of Frederick A. Becker, for Linda Laitz and Robert Laitz, owners.
SUBJECT – Application March 8, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141); less than the minimum required side yard (ZR §23-461 & §23-48) and less than the required rear yard (ZR §23-47). R-2 zoning district.
PREMISES AFFECTED – 1232 East 27th Street, west side of East 27th Street, between Avenue L and Avenue M, Block 7644, Lot 59, Borough of Brooklyn.
**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING**
**TUESDAY MORNING, MAY 1, 2012**
**10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**21-01-BZ**
APPLICANT – Troutman Sanders, LLP, for Mattone Group Jamaica Co., LLC, owner; Bally's Total Fitness of Greater New York, lessee.
SUBJECT – Application January 23, 2012 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Bally Total Fitness*) which expired on May 22, 2011. C6-3 (DJ) zoning district.
PREMISES AFFECTED – 159-02 Jamaica Avenue, 160th Street, Block 10100, Lot 1, Borough of Queens.
**COMMUNITY BOARD #12Q**
APPEARANCES – None.
**ACTION OF THE BOARD –** Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit for a physical culture establishment ("PCE"), which expired on May 22, 2011; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

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

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

WHEREAS, the subject building occupies the entirety of Block 10100, bounded by Jamaica Avenue to the north, 160th Street to the east, Archer Avenue to the south, and Parsons Boulevard to the west, in a C6-3 zoning district within the Special Downtown Jamaica District; and

WHEREAS, the PCE occupies a total of 24,014 sq. ft. of floor area on the first and second floors of a three-story commercial building on the site; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 22, 2001 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, which expired on May 22, 2011; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on May 22, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from May 22, 2011, to expire on May 22, 2021, *on condition* that the use and operation of the site shall substantially conform to plans filed with this application marked "Received January 23, 2012"-(4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 22, 2021;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB Application No. 400910065)

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**256-02-BZ**
APPLICANT – Goldman Harris LLC, for 160 Imlay Street Real Estate, owner.
SUBJECT – Application February 10, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on March 18, 2012. M2-1 zoning district.
PREMISES AFFECTED – 160 Imlay Street, bounded by Imlay, Verona and Commerce Streets and Atlantic Basin, Block 515, Lot 75, Borough of Brooklyn.
**COMMUNITY BOARD #6BK**
APPEARANCES –
For Applicant: Engene Travors.
**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 complete construction of a previously granted variance to permit the conversion of an existing six-story industrial building to residential use; and

WHEREAS, a public hearing was held on this

application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

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

WHEREAS, the subject site is located on the west side of Imlay Street between Commerce Street and Verona Street, within an M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 23, 2003 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing vacant six-story industrial building to residential use, contrary to § 42-00; and

WHEREAS, the Board notes that, pursuant to ZR § 72-23, a variance automatically lapses if substantial construction in accordance with the approved plans is not completed within four years from the date of the variance; however, if judicial proceedings have been instituted to review the Board's decision, the four-year lapse period commences upon the date of entry of the final order in such proceedings, including appeals; and

WHEREAS, the applicant notes that judicial proceedings were instituted to review the Board's decision in the subject case (In the Matter of Red Hook/Gowanus Chamber of Commerce v. New York City Board of Standards and Appeals, et. al., Index No. 2308/04); and

WHEREAS, the applicant submitted a Decision and Order from the Appellate Division dated March 18, 2008, which denied the amended petition and dismissed the proceeding for failure to join a necessary party; and

WHEREAS, the applicant states that the March 18, 2008 Decision and Order has not been appealed and constitutes a final order in the proceeding for the purposes of ZR § 72-23; and

WHEREAS, accordingly, the four-year lapse period for the variance commenced on March 18, 2008, and substantial construction was to be completed by March 18, 2012; and

WHEREAS, the applicant states that due to financing delays and additional delays related to the subject litigation, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 23, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on May 1, 2016; *on condition*:

THAT substantial construction shall be completed by May 1, 2016;

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

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

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

(DOB Application No. 301396790)

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**77-05-BZ**

APPLICANT – Wachtel & Masyr, LLP, for Jack Ancona, owner.

SUBJECT – Application February 21, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a 12-story mixed use building, containing residential (UG2) and retail uses (UG6) which expired on February 28, 2010; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 132 West 26th Street, between Avenue of the Americas and Seventh Avenue, Block 801, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a 12-story mixed-use residential/retail building, which expired on February 28, 2010; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

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

WHEREAS, the subject site is located on the south side of West 26th Street between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since February 28, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a 12-story mixed-use building with commercial use on the first and second floors and residential use above, contrary to ZR § 42-00; and

WHEREAS, substantial construction was to be completed by February 28, 2010, in accordance with ZR § 72-

23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 28, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on May 1, 2016; *on condition*:

THAT substantial construction shall be completed by May 1, 2016;

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

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

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

(DOB Application No. 104039728)

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**808-55-BZ**

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35th Avenue, Block 6169, Lot 6, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: John 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 May 15, 2012, at 10 A.M., for decision, hearing closed.

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**820-67-BZ**

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Willy Yuin.

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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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**64-96-BZ**

APPLICANT –Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14th Avenue, Block 4645, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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**305-00-BZ**

APPLICANT – Robert A. Caneco, for Robert Gullery, owner.

SUBJECT – Application April 16, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-21) for the continued operation of a UG8 parking lot which expired on January 15, 2004; waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 268 Adams, south side of Adams Avenue between Hylan Boulevard and Boundary Avenue, Block 3672, Lot 14, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Robert A. Caneco.

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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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**135-01-BZ**
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.
SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.
PREMISES AFFECTED – 1815/17 86th Street, 78'-8.3"northwest 86th Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.
**COMMUNITY BOARD #11BK**
APPEARANCES –
For Applicant: Todd Dale.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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**359-01-BZ**
APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.
SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.
PREMISES AFFECTED – 5002 14th Avenue, aka 5000-5014 14th Avenue, aka 1374-1385 50th Street, Block 5649, Lot 38, Borough of Brooklyn.
**COMMUNITY BOARD #12BK**
APPEARANCES –
For Applicant: Nora Martin.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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**395-04-BZ**
APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Meyer Unsdorfer, lessee.
SUBJECT – Application April 3, 2012 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on November 1, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on November 1, 2009; waiver of the Rules. R5 zoning district.
PREMISES AFFECTED – 1232 54th Street, southwest side 242'6" southeast of the intersection formed by 54th Street and 12th Avenue, Block 5676, Lot 17, Borough of Brooklyn.
**COMMUNITY BOARD #12BK**
APPEARANCES –
For Applicant: Moshe Friedman.
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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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**128-10-BZ**
APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.
SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.
PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Loy 31, Borough of Queens.
**COMMUNITY BOARD #8Q**
APPEARANCES –
For Applicant: Eric Palatnik.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

**45-07-A**
APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.
SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.
PREMISES AFFECTED – 1472 East 19th Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.
**COMMUNITY BOARD #14BK**
APPEARANCES –
For Applicant: Eric Palatnik.
**ACTION OF THE BOARD –** Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of a two-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 10, 2012, after due notice by publication in *The City*

*Record*, with continued hearings on February 14, 2012 and March 27, 2012, and then to decision on May 1, 2012; and

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

WHEREAS, the site is located on the west side of East 19th Street, between Avenue N and Avenue O, and has a lot area of 3,500 sq. ft.; and

WHEREAS, the owner proposes to construct a two-story mixed-use residential/community facility building with a floor area of 5,500 sq. ft. (1.49 FAR) and a height of 39'-2"; and

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

WHEREAS, the proposed building complies with the former zoning district parameters; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the "Midwood Rezoning," which rezoned the site to R4-1; and

WHEREAS, the building does not comply with the R4-1 district parameters as to the maximum permitted floor area, FAR, or height; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on July 10, 2007, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant four years to complete construction and obtain a certificate of occupancy, which expired on July 10, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays, including the contractor for the project going out of business; and

WHEREAS, the applicant submitted evidence of its attempts to obtain a new contractor and its efforts to market the property; and

WHEREAS, at hearing, the Board directed the applicant to repair the fence at the site and provide evidence of general site cleanup; and

WHEREAS, in response, the applicant submitted photographs reflecting that the fence has been repaired and the site has been cleaned up; and

WHEREAS, the Board has reviewed the evidence and determined that an extension of time is warranted; and

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

*Therefore it is Resolved* that this application to renew DOB Permit No. 302041261, 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 two years from the date of this resolution, to expire on May 1, 2014.

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**122-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mitchell Pacifico, owner.

SUBJECT – Application August 23, 2011 – Proposed construction of a one family dwelling located partially within the bed of a mapped street, contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 5 Bement Avenue, southeast corner of Bement Avenue and Richmond Terrace, Block 150, Lot 4, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 520070299, reads in pertinent part:

> Proposed construction of a one family residence building partially within the bed of a mapped street is contrary to General City Law and not permitted.
>
> Therefore referred to the Board of Standards and Appeals for approval; and

WHEREAS, this is an application to permit the construction of a single-family home in the bed of a mapped street, Richmond Terrace, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the *City Record*, and then to closure and decision on May 1, 2012; and

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

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

WHEREAS, by letter dated April 3, 2012, the Fire Department states that it has no objection to the proposal; and

WHEREAS, by letter dated October 14, 2011, the Department of Environmental Protection ("DEP") states that

the applicant submitted a site plan which shows the 100'-0" total width of Richmond Terrace, from which approximately 49'-0" in the narrowest part of the street will be available for the existing 12-inch diameter and 20-inch diameter City water mains and the 66-inch diameter interceptor sewer, also for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewers, 48-inch diameter storm sewer, and 84-inch diameter interceptor sewer; and

WHEREAS, DEP further states that the site plan shows the 80'-0" total width of Bement Avenue, 60'-0" of which will be available for the existing 12-inch diameter sanitary sewer, 4'-0" by 2'-4" storm sewer and an eight-inch diameter City water main, also for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, 48-inch diameter storm sewer and 4'-0" by 2'-6" storm sewer; and

WHEREAS, DEP states that, based upon the above, it has no objection to the subject proposal; and

WHEREAS, by letter dated December 23, 2011, the Department of Transportation ("DOT") states that the subject lot is not currently included in the agency's Capital Improvement Program, but requires that any construction that may involve sidewalks must conform to the standards set by the Americans with Disabilities Act ("ADA"); and

WHEREAS, in response, the applicant states that any construction that involves sidewalks will conform to ADA standards; 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 Staten Island Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 520070299, is modified by the power vested in the Board by Section 35 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 March 23, 2012"- (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 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 any construction that involves sidewalks will conform to ADA standards;

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

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

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

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**161-11-A**
APPLICANT – Quinn McCabe, LLP, for Britton Property, Inc., owner.
SUBJECT – Application October 14, 2011 – Appeal seeking to vacate a Stop Work Order and rescind revocation of building permits issued for failure to obtain authorization from the adjacent property owner. R7B Zoning District.
PREMISES AFFECTED – 82-20 Britton Avenue, east side of Britton Avenue between Broadway and Layton Street, Block 1517, Lot 3, Borough of Queens.
**COMMUNITY BOARD #4Q**
APPEARANCES –
For Applicant: Christopher P. McCabe and Britton Properties.
**ACTION OF THE BOARD –** Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated September 19, 2011 by the Queens Borough Commissioner of the Department of Buildings ("DOB") (the "Final Determination"), with respect to DOB Application No. 410067653; and

WHEREAS, the Final Determination states, in pertinent part:

> By letter dated December 6, 2010, pursuant to Section 28-104.2.10 and 28-105.10 of the Administrative Code of the City of New York ("AC") the APPROVAL(S) AND PERMIT(S) IN CONNECTION WITH THE ABOVE-REFERENCED APPLICATION WERE REVOKED.
>
> As of this date, the Department has not received sufficient information to demonstrate that the approval(s) and permit(s) should not be revoked; and

WHEREAS, a public hearing was held on this appeal on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on May 1, 2012; and

WHEREAS, the site had visits by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHERAS, the appeal is filed on behalf of the property owner who contends that DOB's denial was erroneous (the "Appellant"); and

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

WHEREAS, the adjacent property owner at 82-22 Britton Avenue (the "Neighbor" or "Neighbors") has provided written and oral testimony in opposition to the appeal; and

WHEREAS, the subject site (the "Site") is located on the

east side of Britton Avenue, between Broadway and Layton Street, within an R7B zoning district; and

WHEREAS, the Site is occupied by a six-story mixed-use commercial/residential building (the "Building") and its southern side yard abuts the Neighbors' northern side yard (the "Side Yard"); and

WHEREAS, the Appellant contests DOB's decision (1) to revoke Permit No. 410067653 (the "Permit") to construct the Building which was completed at the time of the revocation, (2) to issue objections related to the construction, which include the requirement that the Appellant obtain the Neighbor's consent in order to remove the objections, and (3) to issue a stop work order against the fully completed construction based upon an alleged trespass upon the Neighbor's property; and

WHEREAS, the Appellant requests that DOB (1) rescind the permit revocation, (2) vacate its objections, and (3) vacate the stop work order because: the Appellant claims it did not trespass upon the Neighbor's property because the Neighbor provided written and oral consent to use the side yard; the stop work order was improper where the Building was completed and there was no work being performed at the time the stop work order was issued; even if Appellant trespassed upon the Neighbor's property, DOB's actions are contrary to the authority set fort at BSA Cal. Nos. 152-08-A and 11-08-A (23rd Street, Manhattan, the "High Line Case") because the Building's foundation and the Building were completed and because neither the site nor the Neighbor's property rely upon shoring for support; DOB has discretion to apply alternate penalties more appropriate to the alleged violation; and the Neighbors should be stopped from seeking relief due to their failure to timely complain about the shoring until after it was completed; and

PROCEDURAL HISTORY

WHEREAS, the Appellant purchased the site on February 12, 2008; and

WHEREAS, on March 3, 2008, the Appellant and the Neighbor entered into an agreement entitled the "Side Yard Agreement," which states:

> This is an agreement between the owner of 82-22 Britton Ave and the owner of 82-20 Britton Ave in Elmhurst that the owner of 82-22 would allow the owner of 82-20 to use their side yard including fencing their side yard during the construction period and at the completion of the construction the owner of 82-20 will pave a new concrete side yard for the owner of 82-22; and

WHEREAS, in March 2008, DOB approved the shoring drawings; and

WHEREAS, on May 12, 2008, DOB issued the Permit to perform the work included in the shoring drawings; and

WHEREAS, as to the shoring, the Appellant states that the shoring drawings identify shoring that was designed to support the side yard between the Site and the Neighbor's property; and

WHEREAS, the Appellant states that shoring comprises steel I-beam soldier piles and wood lagging and that the soldier beams extend into the Side Yard by a maximum of six inches at each soldier pile below grade level; and

WHEREAS, in August 2008, the Appellant represents that the foundation was installed and the shoring no longer provided any support for the Building or for the Side Yard, rather the lateral forces of the soil under the Side Yard were transferred to the foundation wall of the Building; and

WHEREAS, the Appellant asserts that the shoring became a vestige that served and continues to serve no useful purpose; and

WHEREAS, the Appellant states that in December 2009, the Neighbor allegedly made a complaint to DOB asserting that shoring trespassed into the Side Yard; and

WHEREAS, on March 18, 2010, DOB issued an intent to revoke the permit and objections; the objections contain two items, both of which relate to the extension of shoring onto the Neighbor's property, without the consent of the owner; the objections state as follows:

> The Shoring detail submitted by the applicant on Plan #S-4 indicates the location of the soldier piles to be placed beyond the property line and also the soil/structure on the adjacent property will be disturbed which needs to be protected per B.C. 1031.
>
> Any work on the adjoining premises requires permission/consent to enter the owner of the adjoining property as per B.C. 27-1026; and

WHEREAS, the Appellant states that at the time the intent to revoke the permit and objections were issued, the Building was completed; the Appellant submitted a photograph of the completed Building; and

WHEREAS, on December 6, 2010, DOB revoked the Permit after several meetings between the Appellant and DOB; and

WHEREAS, the Appellant's structural engineering consultant states that the shoring cannot be safely removed because such removal would cause damage to the site and the Neighbor's property; and

WHEREAS, in 2010, the Appellant commenced an Article 78 proceeding against DOB entitled In the Matter of Britton Property, Inc. v. New York City Department of Buildings (Supreme Court, Queens County) (Index No. 292250/10) in which Appellant sought an order requiring DOB to rescind the revocation of the Permit and the stop work order; and

WHEREAS, by order dated May 6, 2011, the court denied Appellant's case based upon the Appellant's failure to exhaust administrative remedies; and

WHEREAS, the Neighbors commenced an action against the Appellant in 2009, Amelia Arcamone-Makinano, *et al*, v. Britton Property, Inc. et al. (Supreme Court, Queens County) (Index No. 32984/09) in which they asserted causes of action against the Appellant for (1) injunctive relief ordering Appellant to remove the shoring, enjoining any trespass on the Neighbor's property, authorizing Neighbor to remove temporary fence, and enjoining Appellant from seeking a Certificate of Occupancy for the Building or obtaining permits for the Building; (2) ejectment seeking the removal of the shoring; (3) recourse for the alleged diminution of value of the

Neighbors' property; and (4) trespass; and

WHEREAS, on December 11, 2009, the Neighbor obtained a temporary restraining order against the Appellant which the court discontinued by order dated February 4, 2010, in which the court expressly discontinued the prior order but maintained that the Appellant not trespass on the Neighbor's property; and

WHEREAS, on February 22, 2010, the court issued a preliminary injunction which (1) enjoins the Appellant from trespassing on the Neighbors' property, (2) requires the removal of a construction fence on the Neighbors' property; and (3) restricts the Appellant from transferring ownership of the Building or individual units during the pendency of the Supreme Court action; and

THE APPELLANT'S POSITION

- There is No Legal Basis for the Stop Work Order

WHEREAS, the Appellant asserts that there is not any legal basis for DOB to issue a stop work order against the entire project; and

WHEREAS, the Appellant cites to Building Code (BC) § 26-118 (*General Provisions, Stop Work notices and orders)* which provides that DOB may issue a stop work order only when work is being performed in violation of the provisions of any law, rule, or regulation enforceable by DOB; and

WHEREAS, the Appellant states that no work was being performed "in violation of the provisions of any law, rule or regulation enforceable by" DOB because the shoring work had already been completed and was buried in the foundation of the Building; and

WHEREAS, accordingly, the Appellant asserts that DOB was not authorized by BC § 26-118 to issue the stop work order and objections with respect to any work at the site; and

WHEREAS, the Appellant asserts that because the shoring and construction on the Building were complete, the stop work order, objections, and revocation were not issued for work that was "being performed," but rather for work that had already been performed; and

WHEREAS, the Appellant cites to its structural engineering consultant's affidavit that (1) the project no longer relies upon the shoring; (2) the shoring was performed competently and safely; and (3) the lateral forces exerted by the soil under the Neighbor's property are supported entirely by the Building's foundation wall and not by the shoring and, as such, the shoring is no longer useful; and

- The Neighbors Granted Consent

WHEREAS, the Appellant asserts that the Side Yard Agreement and purported oral consent reflects the Neighbor's consent for the shoring; and

WHEREAS, the Appellant asserts that the Side Yard Agreement is broad and does not restrict the installation of the shoring; and

WHEREAS, the Appellant asserts that (1) DOB's claim that it does not have the authority to interpret the Side Yard Agreement is without any merit since no interpretation is necessary and (2) the existence of litigation between the parties does not preclude the Board from determining that consent was granted to the Appellant with respect to the use of the Side Yard based upon the language of the Side Yard Agreement; and

WHEREAS, the Appellant asserts that DOB improperly interpreted the Side Yard Agreement by determining that the Side Yard Agreement did not constitute one of the forms of written consent that DOB accepts in cases where work is to be performed on an adjacent site; and

WHEREAS, the Appellant asserts that by determining that the Side Yard Agreement does not fit within DOB's understanding of an acceptable form of consent, DOB interpreted the Side Yard Agreement in favor of the Neighbors; and

WHEREAS, in response to DOB's assertion that its actions reflect its interest in maintaining the status quo, the Appellant states that the status quo is not maintained since all work is complete and the effect of the revocation of the permit and issuance of objections is that the Appellant is subject to reduced leverage in negotiations with the Neighbors; and

WHEREAS, the Appellant asserts that DOB's rejection of the Side Yard Agreement is improper given that DOB does not provide guidance to building permit applicants as to what constitutes consent to perform necessary shoring or underpinning work under an adjacent property; and

WHEREAS, the Appellant asserts that DOB's stated policy to only accept a signed Plan/Work Application (PW1) form or a letter or other written statement authorizing the applicant to file the application is not codified anywhere; and

- Prior Board Authority and DOB Actions for Similar Projects

WHEREAS, the Appellant asserts that DOB's actions are arbitrary and capricious as they are contrary to the Board's decisions and DOB's own actions in several cases; and

WHEREAS, the Appellant cites to the condition in the High Line Case that the new building no longer relied upon the earth retention work for support because the lateral forces exerted by the soils under the adjacent site were supported entirely by the new foundation wall and not the earth retention work and the removal of the earth retention system would have damaged the adjacent building; and

WHEREAS, the Appellant notes that in the High Line Case, the property owner was permitted to proceed despite the fact that he had not obtained consent from the adjacent neighbor for the earth retention work; and

WHEREAS, the Appellant asserts that there is not a distinction between the High Line Case and the subject case where shoring was for an earth retention system and that once the Building's foundation was installed, the shoring no longer provided any support for the Building or for the side yard of the Neighbor's site, or the Neighbor's home; and

WHEREAS, the Appellant also cites to a DOB approval at 238 West 74th Street, Manhattan, in which the property owner underpinned the adjacent site without the consent of the adjacent property owner and DOB issued objections to the property owner based upon the alleged failure to obtain the adjacent owner's consent; and

WHEREAS, the Appellant asserts that in the West 74th Street case, DOB permitted the property owner to continue construction and only precluded the property owner from

installing any further encroachments on the adjacent site; and

WHEREAS, the Appellant also cites to a DOB approval at 755 Bedford Avenue, Brooklyn where DOB denied the adjacent neighbor's request to revoke permits due to damage during construction; and

WHEREAS, the Appellant states that pursuant to BC § 28-207.2 (*Criminal Judicial Proceedings, Stop work orders*), DOB does not have the authority to issue the stop work order because the BC provides discretion that "[w]henever the commissioner finds that any building work is being executed in violation of the provisions of this code . . . the commissioner or his or her authorized representative may issue a stop work order;" and

WHEREAS, the Appellant reads the text to say that an issuance of a stop work order is only proper where work is being performed in violation of the Code and all of its work had concluded; and

WHEREAS, the Appellant asserts that the High Line Case is on point because the only reason the two separate permits (one for foundation and one for the building) were relevant there was because the building had only been completed to the foundation and the Board determined that the prospective work could proceed; the Appellant also asserts that the Board held that the work performed under the new building permit could proceed because no additional work was required under the shoring permit and because the work to be performed under the new building permit was not reliant upon the shoring work; and

- DOB has Discretion to Apply Alternative Penalties

WHEREAS, the Appellant asserts that DOB has discretion to apply alternative penalties which are more appropriate to the severity of the Appellant's violations; and

WHEREAS, specifically, pursuant to BC §§ 26-116 (*General Provisions, Contents of notices and orders)* and 26-125 (*General Provisions, Violations of building laws: punishments, penalties; penalty*) DOB has the discretion to punish an alleged violation by requesting "the corporation counsel to institute legal proceedings to restrain, correct or abate such violation" and to punish any violations by a fine or through civil action; and

WHEREAS, the Appellant asserts that DOB would be within its discretion to require Appellant to pay a fine with respect to violations; additionally, if it is found that the Appellant did trespass on the Neighbors' site, then the Neighbors are entitled to pursue their claim against the Appellant directly for any damages; and

WHEREAS, the Appellant notes that the Neighbor already commenced an action against the Appellant seeking damages for trespass; and

WHEREAS, the Appellant asserts that there is no reason for DOB to issue the stop work order and objections in an effort to enforce the Neighbor's rights, rather than issuing a fine against the Appellant and allowing the parties to resolve their respective claims in court; and

- Neighbors Complaint was Untimely and They Should be Estopped from Seeking Relief

WHEREAS, the Appellant asserts that the Neighbors did not file a complaint regarding the shoring until December 2009, which was approximately 19 months after the shoring was completed and after the Building was completed; and

WHEREAS, the Appellant cites to the doctrine of laches, citing to the Appellate Division which stated "where neglect in promptly asserting a claim for relief causes prejudice to one's adversary, such neglect operates as a bar to a remedy" Save the Pine Bush v. New York State Dept of Envtl Conservation, 289 A.D.2d 562 (N.Y. 3rd Dept 2001) citing Matter of Stockdale v Hughes, 189 A.D. 2d 1065, 1067 (N.Y. 3rd Dept 1993); and

WHEREAS, the Appellant asserts that the Neighbors' delay in issuing their complaint until construction was complete eliminates the possibility of redesigning the Building to limit the earth retention work to the Appellant's property; and

- Equitable Relief

WHEREAS, the Appellant asserts that there are unique circumstances to the matter which require that relief be granted in equity because the Appellant asserts that an administrative agency's determination can be overturned where it is so "disproportionate to the offense as to be shocking to one's sense of fairness," citing Featherstone v. Franco, 95 N.Y. 2d 550, 550 (N.Y. 2000); and

WHEREAS, the Appellant asserts that if the appeal is not granted, it will be unable to obtain a Certificate of Occupancy and the Building will stand vacant which is a result that is disproportionate to the alleged offense and would also be a detriment to the community; and

WHEREAS, the Appellant cites to Charter § 666(7) for the Board's authority to vary or modify a rule or regulation when there are practical difficulties or unnecessary hardship caused by carrying out the strict letter of the law; and

WHEREAS, the Appellant asserts that it should be able to apply for a Temporary Certificate of Occupancy or a Certificate of Occupancy; and

DOB'S POSITION

- Building Code Non-Compliance

WHEREAS, DOB states that the building application which includes shoring of the Neighbors' home without consent from the Neighbors is contrary to the terms of BC §§ 27-140 *(Approval of Plans, Applicant)*, 27-142 (*Approval of Plans, Applicant's Statement*) and 27-151 *(Permits, Applicant)* and the associated permit was properly revoked because the construction documents propose construction on the Neighbors' property without the Neighbors' consent; and

WHEREAS, DOB states that BC § 27-140 requires that all applications be accompanied by a signed statement of the owner stating that the applicant is authorized to make the application and that a signed statement by the applicant stating that he or she is authorized to make the application be submitted with the application; and

WHEREAS, DOB states that it received a letter dated December 15, 2009 from the Neighbors which stated that work under the Permit improperly encroached on their property; and

WHEREAS, DOB states that drawings S-1 and S-4 associated with the Permit show shoring consisting of steel I-beams and timber lagging on both adjoining properties but that the Permit application form PW1 is only signed by the

Appellant and not by the Neighbors; and

- Memorandum and Case Law

WHEREAS, DOB asserts that its permit revocation is consistent with a DOB memorandum dated May 8, 1984 (the "1984 Memo") which states that when an owner notifies DOB in writing that it did not authorize the filing of an application, DOB may revoke the approval and permit regardless of the status of the work; the purpose and procedure is to stop all ongoing work in order to preserve the conditions at the time the owner alerts DOB that it did not agree to the work while the parties attempt to resolve the dispute; and

WHEREAS. DOB cites to the Board's decision in BSA Cal. No. 480-83-A, which led to the Bun & Burger v. New York Dept of Buildings, 111 A.D.2d 140 (1st Dept 1985) litigation and which found that until owner's authorization is granted, DOB can find that the permit must be revoked because the Code's requirement for authorization has not been satisfied; and

WHEREAS, in the cited case, DOB notes that the Board also stated that DOB may properly revoke the building permit when there is a dispute over the right to perform work and that DOB should defer to the courts for an adjudication of the parties' rights; and

- The Side Yard Agreement

WHEREAS, DOB states that it does not have authority to interpret private agreements and cannot treat the Side yard Agreement as an expression of consent for the permitted work under the Administrative Code; and

WHEREAS, DOB states that it is the courts' role to interpret the agreement and there has not been a determination yet about whether there was consent to the permitted work in accordance with the Code; and

WHEREAS, DOB asserts that applicants who perform construction without an owner's consent to do the work proceed at their own risk and cannot fault DOB's filing procedures, which allow for a single application for work on both sides of a property line, for failure to comply with the Administrative Code; and

- Prior Board Cases and Other Underpinning Cases

WHEREAS, DOB distinguishes the High Line Case from the subject case and finds that the Board's decision in the High Line Case does not control; and

WHEREAS, DOB finds that in the High Line Case, the appellant challenged DOB's issuance of stop work orders under a new building permit and a shoring permit after DOB received a written complaint that the appellant performed shoring work pursuant to a shoring permit at the adjacent site without permission of the adjacent owner; and

WHEREAS, DOB states that the Board upheld the stop work order against the shoring permit given the absence of the owner's consent, but determined that the stop work order under the new building permit was improper; and

WHEREAS, DOB notes that in the High Line Case, the Board found that DOB's imposition of the stop work order was inappropriate because (1) the new building permit was separate from the shoring permit; (2) the new building permit was not structurally dependent on the shoring work; and (3) the work under the new building permit was located entirely on the appellant's property and the adjacent owner's consent was not required for its performance; and

WHEREAS, DOB states that the High Line Case can be distinguished from the subject case because in the subject case, the new building work and shoring work are under a single permit and the new building work is not located solely on the Appellant's property; and

WHEREAS, DOB states that the distinction between the separate permits in the High Line Case and the single permit in the subject case is a meaningful one; and

WHEREAS, in response to the Board's questions at hearing, DOB provided additional testimony on distinctions between the subject case and other claims of underpinning without consent; and

WHEREAS, as to 238 West 74th Street, Manhattan, DOB states that the project design initially proposed work on the neighbor's property and then was amended to relocate all work within the property lines; and

WHEREAS, DOB states that under the revised plans, the owner of 238 West 74th Street satisfied all applicable laws without reliance on work performed on the neighbor's property and, accordingly, DOB could sign off on the work without concern that doing so might sanction a trespass; and

WHEREAS, DOB states that in the subject case there has not been a change in the design and the work proposed in the construction documents relies on shoring that was mandated by the Code and performed on the Neighbors' property allegedly without consent; and

WHEREAS, DOB states that it cannot approve shoring work if there is a reasonable risk or likelihood that it is erroneously approving work that unlawfully encroaches on the Neighbors' property; and

WHEREAS, as to 3585 Greystone Avenue, Bronx, DOB distinguishes it from the subject case in that it states that it did not find a written complaint in its records from the neighbor; and

WHEREAS, as to 123 87th Street, Brooklyn (BSA Cal. No. 221-10-A), DOB states that it raised an objection to the application upon receipt of the neighbor's complaint and a court determination that there was an encroachment onto the adjacent property; and

WHEREAS, further, in 87th Street, DOB states that it advised the owner that the objection would not be removed until either the court's findings were overturned or the encroachment was removed, a position it finds to be consistent with its position in the subject case; and

WHEREAS, in response to the Board's inquiry about why DOB did not merely issue violations instead of revoking the permit, DOB states that the Appellant would have a defense in pointing out that the permit expressly authorizes that work; and

WHEREAS, DOB cites to BC § 27-1032 which requires that the sides of all excavations five feet or greater in depth or height measured from the level of the adjacent ground surface to the deepest point of the excavation must be protected and maintained by shoring, bracing, sheeting, sheet piling or by other retaining structures; further, the required shoring must be

indicated on the approved plans, the shoring work must be performed in accordance with the plans and must be signed off by DOB in order for a new building to comply with the Code; and

WHEREAS, DOB states that the shoring work is represented on the approved new building plans and those plans cannot now be amended to exclude the shoring work for the purpose of proceeding with work solely on the Appellant's property in order to circumvent the owner authorization requirement; and

WHEREAS, DOB states that it does not have the power to grant equitable relief by judging a complaint of lack of authorization to be untimely or a neighbor's refusal to grant consent to be unreasonable; and

WHEREAS, further, DOB states that it does not have the legal authority to waive the requirement for authorization based on an equitable determination; and

WHEREAS, in response to the Board's inquiry about what form of evidence of owner's authorization DOB accepts to demonstrate compliance with the applicable Administrative Code provisions, DOB states that it accepts (1) the adjacent owner's signature added to the PW1: Plan/Work Application form for the new building permit or (2) a letter or other written statement authorizing the applicant to file the application; and

WHEREAS, DOB adds that the adjacent owner can also specify that authority is given only for work proposed in the application that is to be performed on the neighbor's property; and

WHEREAS, in the alternate, DOB states that a separate PW1 for shoring or underpinning may be signed only by the adjacent owner and filed by the applicant on the adjacent owner's property; and

WHEREAS, DOB states that the subject application is flawed because it did not include a signature, letter or other statement, or a separate PW1 and therefore was not properly authorized in accordance with BC §§ 27-140, 27-142, and 27-151; and

WHEREAS, in response to the Board's question about whether it was in fact interpreting the Side Yard Agreement submitted by the Appellant even though its policy is that it does not interpret private agreements for the purpose of determining a party's right to perform construction work on a neighbor's property, DOB states that it has not interpreted the meaning of the Side Yard Agreement but rather determined that the agreement is not a signed statement of the owner saying that the applicant is authorized to make the application; and

WHEREAS, DOB states that a court may determine that the Side Yard Agreement is an expression of the Neighbors' consent but it is beyond DOB's jurisdiction to make such a finding; and

THE APPELLANT'S SUPPLEMENTAL RESPONSE

WHEREAS, as to the 1984 Memo, the Appellant distinguishes the facts in that the memo addresses authorization in a landlord-tenant context which is not applicable to the subject facts; and

WHEREAS, further, the Appellant finds that the memo identifies a policy pursuant to which DOB would "stop all ongoing work in order to preserve the conditions [of the premises]" and which is irrelevant since there was not any ongoing work at the site to stop as it was 100 percent complete; and

WHEREAS, the Appellant also disagrees with DOB's reliance on Bun & Burger because that case addresses ongoing work performed by a lessee without the fee owner's permission; and

WHEREAS, in response to the Neighbors' assertion that the Preliminary Injunction reflects a decision on the encroachment question, the Appellant states that it does not constitute a final determination as to whether the Appellant had consent to install the shoring partially under the Neighbors' property; and

WHEREAS, the Appellant asserts that the Preliminary Injunction granted only the following relief: (1) to enjoin the Appellant from trespassing on the Neighbors' property; (2) to remove the construction fence on the Neighbors' property; and (3) to restrict the Appellant from transferring the Building or its individual units during the pendency of the action in court; and

WHEREAS, the Appellant notes that the court expressly refused to grant the portion of the Neighbors' motion for a preliminary injunction seeking the removal of the I-beams and identified such relief as "the ultimate relief sought;" and

WHEREAS, the Appellant states that the issues before DOB and before the court are distinct and that remedies in the two forums are not reliant on each other; and

WHEREAS, the Appellant asserts that DOB fails to distinguish the West 74th Street project where it is not disputed that unauthorized underpinning was installed under the adjacent building and never removed; and

WHEREAS, the Appellant also asserts that DOB fails to distinguish the Greystone Avenue project which the Appellant finds to also involve an adjacent owner's complaint about unauthorized underpinning and which did not result in the revocation of the permit or the issuance of a stop work order; and

WHEREAS, the Appellant also distinguishes the 87th Street case in that it began as a zoning dispute and DOB's refusal to approve the owner's application only arose after the court determined that a trespass existed; and

WHEREAS, the Appellant suggests that DOB modify its PW1 form to include a checkbox to indicate whether shoring work will be performed on a neighbor's property; and

THE OPPOSITION'S ARGUMENTS

- Absence of Authorization

WHEREAS, the Neighbor asserts that DOB acted prudently in stopping construction in order to protect public safety; and

WHEREAS, the Neighbor represents that the Appellant falsely states that the Neighbor consented orally and in writing to the encroachment on their property; and

WHEREAS, the Neighbor states that the approved plans misrepresented the facts by falsely stating the Appellant had consent to encroach; and

- The Encroachment is Not *de minimis*

WHEREAS, the Neighbor contests the Appellant's claim that encroachment only extends approximately 6 inches into the side yard and states that based on a survey dated December

9, 2009 which shows one beam crossing the property line by 7.75 inches the Appellant's prior attorney conceded to the encroachment; and

WHEREAS, further, the Neighbor states that a court-ordered inspection resulted in an October 20, 2011 survey which showed that 18 underground I-beams cross the property line by approximately 11 inches along a 100-ft. span; and

- Prior Board Cases

WHEREAS, the Neighbor states that the Board has a history of denying appeals challenging DOB decisions requiring owner authorization; and

WHEREAS, specifically, the Neighbor addresses the High Line Case and decides that it is not analogous to the subject case because in the subject case, the Appellant, while working with one permit, constructed on the Neighbors' property without consent, causing a continuous trespass and compromising the foundation of the Neighbors' home as a result of the unlawful taking of their property; and

WHEREAS, the Neighbor states that issues of permanent and significant encroachment and damages to soil and structure which were to be protected during shoring, were not raised in the High Line Case; and

WHEREAS, the Neighbor states that contrary to the Appellant's claim, they did not comply with BC § 27-1031 (requiring protection of adjoining structures during excavation) or with BC § 27-1026, in that the foundation wall for the adjacent property was left exposed during the shoring and is currently exposed; and

WHEREAS, the Neighbor provided evidence such as photographs and affidavits from construction consultants to support its claim that there was damage to its property and home associated with the construction of the Building; and

WHEREAS, additionally, the Neighbor cites to (1) BSA Cal. No. 221-10-A (123 87th Street, Brooklyn) as a decision that concerns owner's authorization for completed construction where there was a court action on the matter, such as the subject case; (2) BSA Cal. No. 154-10-A (540 Bedford Avenue, Brooklyn) which discusses the requirement to reiterate owner authorization throughout construction to safeguard against completing construction without owner's authority and in which the Board approved DOB's policy of maintaining the status quo pending resolution of the dispute; and (3) BSA Cal. No. 132-10-A (105 West 72nd Street, Manhattan) which addressed the requirement for owner authorization as important to public safety and in which the Board referenced the Bun & Burger decision, which the Neighbor finds to support the arguments for denying the subject application; and

- Court Actions

WHEREAS, the Neighbor asserts that in the litigation associated with this case, the Supreme Court acknowledged that remedial work may be necessary on both properties if removal of the I-beams takes place, and prohibited the Appellant from transferring its property during the pendency of the action; the Appellate Division upheld the injunction issued by the Supreme Court, finding that the Neighbors "demonstrated a likelihood of success on the merits of their trespass cause of action;" and

WHEREAS, the Neighbor asserts that a report from the Appellant's engineer submitted during litigation noted that the encroaching shoring beams "can and should be removed after all foundation work is completed;" thus, the Neighbors assert that DOB is correct to maintain the status quo until the matter is settled, since there is a possibility of removing the I-beams; and

WHEREAS, the Neighbor asserts that the Board is collaterally estopped from hearing this application because the issues have been adjudicated in court; and

CONCLUSION

WHEREAS, the Board recognizes that the BC § 27-1031 (*Excavation Operations, General Requirements)* requires that property owners shore adjacent sites and buildings during construction; and

WHEREAS, the Board looked to BC §§ 27-1026 (*Protection of Adjoining Property, General)* and 27-1031 which serve as the basis for DOB's actions being appealed and finds that neither sets forth the requirement for an adjacent owner's authorization to install shoring as § 27-1031 requires shoring and underpinning of adjacent properties (which was completed) and § 27-1026 requires permission to enter the adjacent property to inspect during construction and demolition; and

WHEREAS, DOB asserts that the Appellant did not comply with the owner's authorization requirement of BC §§ 27-140 and 27-142; however, the Board notes that BC § 27-140 requires the applicant to provide authorization from the owner – a signed document stating that the applicant is authorized to make the application and does not speak to instances where there is shoring work on an adjacent site with a different owner; BC § 27-142 states that an applicant must provide a signed statement that they are authorized to make an application, but again does not speak to instances where there is shoring work on an adjacent site with a different owner; and

WHEREAS, accordingly, the Board does not find that any of the Code provisions that DOB cites give direction to property owners in the context of shoring an adjacent property or direct DOB to revoke permits and issue stop work orders when there is a question about authorization; and

WHEREAS, the Board also notes that the PW1 form does not provide any direction on how to ensure that multiple authorizations are obtained when multiple owners are involved or when work is performed on multiple zoning lots; the PW1 form only contemplates work to be performed on the zoning lot under the control of the applicant; and

WHEREAS, the Board distinguishes the facts contemplated in the 1984 Memo which it finds pertains to lessees and property owners (as was the case in Bun & Burger); the Board understands DOB's position that it is being consistent with the memo, but the Board does not find any basis for a requirement to follow a memo that is so factually distinct from the subject matter; and

WHEREAS, the Board does not find that the facts of Bun & Burger or the 1984 Memo are relevant to the subject facts since they involve disputes over who the single authorizing party is on one site, do not involve the common construction practice of shoring, and do not involve adjacent properties; all of those facts are relevant to the subject case; and

WHEREAS, the Board notes that the Neighbors' consent is not required for any remaining work to be performed, as the Appellant represents that all work is complete; and

WHEREAS, even if the Board were to accept DOB's assertion that it has not interpreted the Side Yard Agreement but has simply determined that the document is not among the documents it accepts, the Board is concerned that there is no codified practice or instruction about what documents would be sufficient and the construction application does not provide a place for the applicant to acknowledge an encroachment; and

WHEREAS, accordingly, the Board does not see the basis for DOB's decision to revoke the permits and issue a stop work order, which are both discretionary actions; and

WHEREAS, the Board asserts that given the density of New York City, the shoring requirement is carried out throughout the City with great frequency; and

WHEREAS, the Board does agree with DOB that there is a public policy goal for requiring shoring and a public policy goal for requiring authorization to implement shoring on an adjacent property; and

WHEREAS, however, the Board finds that there is not currently a clear mechanism for property owners to establish owner's authorization; and

WHEREAS, the Board does not take a position as to the meaning of the Side Yard Agreement and leaves that interpretation to the courts; and

WHEREAS, the Board acknowledges DOB's practice of stopping construction when there is a complaint from a neighbor about lack of authorization, but it does not see that in this instance where work has already been completed that issuing a stop work order is a necessary remedy; and

WHEREAS, the Board supports the general principle of preserving the status quo so that no further damages are incurred, but, in the subject case, the construction has all been performed and the court has ordered that there not be any transfer in the Building's ownership, so the Board does not see the basis for exercising discretion to completely halt the project; and

WHEREAS, the Board finds that an interim resolution, while the court determines the question of authorization and while the Appellant is precluded from transferring the Building's ownership, is more reasonable than DOB's actions; and

WHEREAS, the Board requested that DOB provide examples of forms of owner's authorization that are accepted and DOB did not provide any examples; and

WHEREAS, the Board agrees with the Appellant that there is not any distinction between the 74th Street example and the subject facts as both involve situations where the encroachment on the adjacent site remains; and

WHEREAS, the Board does not see any basis to allow an applicant to change construction drawings to reflect a condition other than what is built in order to resolve the authorization question, as was done in 74th Street; the Board finds such practice to perpetuate a fiction; and

WHEREAS, further, the Board notes that DOB will not allow the Appellant to revise the drawings or file a separate shoring and new building permit; and

WHEREAS, the Board finds that DOB has the discretion not to issue a stop work order, particularly when there is no work being performed and has the discretion not to revoke the permit, both of which are more reasonable actions given the facts; and

WHEREAS, the Board finds that (1) DOB does not have a practice that puts property owners on notice for how to effectuate authorization for shoring cases; (2) the 1984 Memo is not applicable to the facts and DOB is not governed by it; (3) if DOB accepts other forms of owner's authorization beside the signature on the form, then it should be clear what is accepted so that it is not in the position of determining whether it is interpreting an agreement or rejecting it based on apparent flaws; and (4) if DOB's position is that it does not interpret agreements, then it should wait for the court to decide the meaning of the Side Yard Agreement before revoking the Permit; and

WHEREAS, the Board suggests that DOB establish a clear policy and procedure for construction work that requires either temporary or permanent shoring infrastructure on adjacent sites and to codify the form of consent that is required and acceptable to DOB; and

*Therefore it is Resolved* that the Board grants the appeal to the extent of reversing the permit revocation and stop work order which are based on an outstanding question of owner's authorization, but the Board does not direct DOB to eliminate its objections or to issue a Certificate of Occupancy.

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**162-11-A**

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES – None.

**ACTION OF THE BOARD –** Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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**173-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58th Avenue, south side of 58th Avenue, 80' east of intersection of 58th Avenue and

Brown Place, Block 2777, Lot 11, Borough of Queens.
**COMMUNITY BOARD #5Q**
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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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**19-12-A**
APPLICANT – Goldman Harris LLC, for 38-30 28th Street, LLC, owner.
SUBJECT – Application January 30, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior zoning district. M1-2/R5B/LIC zoning district
PREMISES AFFECTED – 38-30 28th Street, between 38th and 39th Avenues. Block 386, Lot 27. Borough of Queens.
**COMMUNITY BOARD #1Q**
APPEARANCES –
For Applicant: Vivien Krieger.
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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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**41-12-A**
APPLICANT – Queen First Properties, LLC, for Mohammad Uddin, owner.
SUBJECT – Application February 15, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R5A zoning district.
PREMISES AFFECTED – 112-26 38th Avenue, 225' from the corner of 112th Street and 38th Avenue. Block 1785, Lot 10. Borough of Queens.
**COMMUNITY BOARD #3Q**
APPEARANCES –
For Applicant: M. Mirza M. Rahman.
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 June 5, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING**
**TUESDAY AFTERNOON, MAY 1, 2012**
**1:30 P.M.**

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

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**ZONING CALENDAR**

**195-11-BZ**
**CEQR #12-BSA-055K**
APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.
SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2070 East 21st Street, west side of East 21st Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.
**COMMUNITY BOARD #15BK**
APPEARANCES –
For Applicant: Lyra J. Altman.
**ACTION OF THE BOARD –** Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 7, 2011, acting on Department of Buildings Application No. 320310230, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b)
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR Section 23-141(b)
3. Proposed enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5'-0", which is contrary to ZR Section 23-461(a) & 23-48;
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on March 6, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on May 1, 2012; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 21st Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,505 sq. ft. (0.60 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,505 sq. ft. (0.60 FAR) to 2,625 sq. ft. (1.05 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.5 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.5 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 2'-6 ½" (a minimum width of 5'-0" is required for each side yard) and to provide a side yard with a width of 5'-5 ½" along the southern lot line; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are at least two homes within two blocks of the site in the subject R3-2 zoning district with FARs in excess of 1.0, and concludes that the proposed FAR is compatible with the neighborhood character; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed bay windows on the south side of the home would provide sufficient clearance for automobiles driving to and from the parking space at the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that there will be at least six feet of clearance below each of the bay windows on the south side of the proposed home, which the applicant represents is sufficient clearance for passing automobiles; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 20, 2012"-(10) sheets and "April 16, 2012"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,625 sq. ft. (1.05 FAR); an open space of 44.5 percent; lot coverage of 55.5 percent; a side yard with a minimum width of 2'-6 ½" along the northern lot line; a side yard with a minimum width of 5'-5 ½" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 1, 2012.

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**187-10-BZ**
APPLICANT – Khalid M. Azam, Esq., owner.
SUBJECT – Application October 5, 2010 – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard zoning requirements (§23-462(c)). R6B zoning district.
PREMISES AFFECTED – 40-29 72nd Street, between Roosevelt Avenue and 41st Avenue, Block 1304, Lot 16, Borough of Queens.
**COMMUNITY BOARD #2Q**
APPEARANCES –
For Applicant: Khalid M. Azam.
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 June 5, 2012, at 1:30 P.M., for decision, hearing closed.

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**71-11-BZ**
APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.
SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.
PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.
**COMMUNITY BOARD #4Q**
APPEARANCES –
For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD –** Laid over to May 15, 2012, at 1:30 P.M., for continued hearing.

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**169-11-BZ**
APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.
SUBJECT – Application October 27, 2011– Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.
PREMISES AFFECTED – 2257 East 14th Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, 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 June 5,

2012, at 1:30 P.M., for decision, hearing closed.

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**187-11-BZ**
APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.
SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.
**COMMUNITY BOARD #3BK**
APPEARANCES –
For Applicant: Ron Mandel and Jack Freeman.
For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

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**193-11-BZ**
APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.
SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.
**COMMUNITY BOARD #15BK**
APPEARANCES –
For Applicant: Eric Palatnik.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

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**40-12-BZ**
APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.
SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.
PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.
**COMMUNITY BOARD #2SI**
APPEARANCES –
For Applicant: Francis R. Angelino and Bob Calvo.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

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**42-12-BZ**
APPLICANT – Sheldon Lobel, P.C., for 158 West 27th Street, LLC, owner; 158 West 27th Fitness Group, LLC, lessee.
SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.
PREMISES AFFECTED – 158 West 27th Street, located on the south side of 27th Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.
**COMMUNITY BOARD #5M**
APPEARANCES –
For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD –** Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

***CORRECTION**

This resolution adopted on April 24, 2012, under Calendar No. 206-10-A thru 210-10-A and printed in Volume 97, Bulletin Nos. 16-18, is hereby corrected to read as follows:

**206-10-A thru 210-10-A**
APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.
SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.
PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.
**COMMUNITY BOARD #2SI**
APPEARANCES –
For Applicant: Philip L. Rampulla.
**ACTION OF THE BOARD –** Applications granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated February 13, 2012, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966 read in pertinent part:

> Proposed construction of a one family residence building within bed of a mapped street is contrary to General City Law 35 and not permitted; and

WHEREAS, this is an application to permit the proposed construction of five single-family homes located within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in the *City Record*, with continued hearings on February 28, 2012 and March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, New York State Assembly Member Michael J. Cusick provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Louis R. Tobacco provided written testimony in opposition to this application; and

WHEREAS, New York State Senator Andrew J. Lanza provided written testimony requesting that the Board review the environmental and transportation issues associated with this application; and

WHEREAS, United States Congress Member Michael G. Grimm provided written testimony in opposition to this application; and

WHEREAS, New Yorkers for Parks provided written testimony in opposition to this application; and

WHEREAS, representatives of the Richmondtown and Clarke Avenue Civic Association and the Grasmere Civic Association provided oral and written testimony in opposition to this application (collectively, the "Opposition"); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposal is in a freshwater wetlands area; (2) an environmental assessment should be performed on the site; (3) the proposal could cause increased flooding in the area; (4) the applicant has not satisfied the findings pursuant to ZR § 72-21; (5) the proposal creates potential zoning non-compliances; (6) the proposal must be reviewed by the Department of City Planning ("DCP"); and (7) there is insufficient parking for the project on the surrounding streets; and

WHEREAS, the subject site consists of 296,208 sq. ft. of lot area bounded by St. Andrews Road to the north and Richmond Road to the south, in an R1-2 zoning district within the Special Natural Area Zoning District; and

WHEREAS, the applicant notes that 59,520 sq. ft. of lot area is Freshwater Wetland, 157,135 sq. ft. of lot area is Freshwater Wetland Adjacent Area, and the remaining 79,533 sq. ft. of lot area is unregulated; and

WHEREAS, the applicant proposes to construct 13 single family homes on the site, with four of the homes fronting on Richmond Road and nine of the homes accessed by Tupelo Court, a newly created private street; and

WHEREAS, the applicant states that three of the homes are proposed to be constructed in the bed of a mapped street known as Mace Street, and two of the homes are proposed to be constructed in the bed of a mapped street known as Ascot Avenue; accordingly, the applicant seeks a waiver of Section 35 of the General City law for the construction of five homes in the bed of a mapped street; and

WHEREAS, the other eight homes in the proposed development do not require a waiver of Section 35 of the General City Law, and therefore are not included in the subject application; and

WHEREAS, by letter dated January 12, 2011, the Department of Transportation ("DOT") states that it has reviewed the project and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, by letter dated September 26, 2011, the Department of Environmental Protection ("DEP") states that the Amended Drainage Plan No. D-3 (R-2)/D-4 (R-1), dated March 17, 2005, does not show any future sewers in the portions of mapped Mace Street and mapped Ascot Avenue at issue, but does show stabilized outlets at the intersection of Mace Street and mapped Call Street which will discharge storm flow into the referenced property; and

WHEREAS, DEP further states that, based on the June 28, 2011 map submitted by the applicant, which shows the DEP easement area which will be available to accept the storm flow discharge from the above-mentioned stabilized outlets, and based on the easement document submitted by the applicant for the portion of the property not to be developed on lot 36, it has no

objections to the proposed application; and

WHEREAS, by letter dated December 7, 2010, the Fire Department states that it objects to the construction of any buildings within the bed of a mapped street (including the construction of the proposed homes in the bed of Ascot Avenue and Mace Street) because such streets should be opened in order to improve emergency
response in the area; and

WHEREAS, in response, the applicant states that it made a good faith attempt to utilize and open the existing mapped but unbuilt streets on the site, however, the New York State Department of Environmental Conservation ("DEC") would not allow the existing streets on the site to be opened because they are within Freshwater Wetland and Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant submitted a letter from DEC dated March 20, 2012 which states that it issued a freshwater wetlands permit for the construction of 13 single family homes on the site, which keeps portions of the beds of St. Andrews Road, Mace Street, and Ascot Avenue unbuilt in perpetuity to preserve and protect freshwater wetlands and their benefits, and the street beds will not be opened and developed on the property controlled by the terms of the cited DEC permit; and

WHEREAS, by letter dated March 6, 2012, the Fire Department states that it reviewed the proposed site plan and all conditions relative to building access roads are in compliance with the 2008 Fire Code; and

WHEREAS, accordingly, the Board acknowledges the stated policy of the Fire Department that all mapped streets be opened, but finds that the applicant has submitted sufficient evidence to warrant approval of the proposed construction based on the inability to open the mapped but unbuilt streets on the site due to the requirements of the DEC freshwater wetlands permit, in conjunction with the Fire Department's acknowledgment that the proposed Tupelo Court will fully comply with the 2008 Fire Code; and

WHEREAS, in response to the concerns raised by the Opposition regarding the construction within the Freshwater Wetlands, flooding, and the need to undergo an environmental assessment of the site, the applicant notes that more than half of the site is being preserved in its natural state, the proposed construction will only take place within the Freshwater Wetlands Adjacent Area and not within the Freshwater Wetlands, and that DEC issued a freshwater wetlands permit for the proposed construction, which incorporated an environmental review that followed SEQR regulations; and

WHEREAS, in response to the Opposition's claim that the proposal does not satisfy the findings of ZR § 72-21 and that it creates potential zoning non-compliances, the Board notes that the findings under ZR § 72-21 are not applicable to an application under Section 35 of the General City Law, and that all issues related to zoning on the site are subject to review and approval by the Department of Buildings; and

WHEREAS, as to the Opposition's contention that the proposal must be reviewed by DCP, the applicant submitted a letter from DCP stating that the proposed project will require Special Natural Area District authorizations and review by the City Planning Commission, but that the project requires a Board determination before an application can be filed with DCP; and

WHEREAS, in response to the Opposition's concerns regarding a lack of parking, the applicant notes that off-street parking spaces will be provided for the proposed homes, the proposed Tupelo Court will be built out to a width of 38 feet such that parking can be provided on that street, and Richmond Road will be widened so that additional parking can be provided on that street; and

WHEREAS, while the Board recognizes the concerns expressed by the Opposition, such considerations are not part of an application to permit construction within the bed of a mapped street under Section 35 of the General City Law, and therefore are not subject to the Board's review; and

WHEREAS, the Board notes that the construction must comply with all requirements of the Zoning Resolution; 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 decisions of the Staten Island Borough Commissioner, dated May 10, 2010, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966, is modified by the power vested in the Board by Section 35 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 March 20, 2012" – (2) sheets; 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 all necessary DEC and DEP approvals must be obtained prior to the issuance of DOB permits;

THAT the necessary DCP review and authorization must be obtained prior to the issuance of DOB permits;

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, April 24, 2012.

***The resolution has been revised to correct the Plans Dates which read:** …*" Received March 20, 2012" – (3) sheets"*… **now reads:** …*" Received March 20, 2012" – (2) sheets"*. **Corrected in Bulletin No. 19, Vol. 97, dated May 9, 2012.**